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# THE Laws of Gaming:

Comprehending  
The various STATUTES, REPORTS,  
and DETERMINATIONS  
On that extensive SUBJECT,

Particularly relative to

## HORSES, RACING, CARDS AND FRAUDS:

Whereunto is added,

The ANSWER and OPINION of the  
Learned Sir JOHN STRANGE, Master of the  
Rolls, to seventeen distinct Queries on the Sta-  
tute of the 23<sup>rd</sup> of Queen ANNE, for avoid-  
ing the Penalties thereby inflicted against  
GAMING.

Calculated for the Caution of YOUTH, and the  
Experience of the ADEPT.

Humbly Inscribed

To the Noble and Right Honourable Members of the  
JOCKEY CLUB.

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*Libertas est quod cuique facere liberte nisi quid jure pro-  
hibetur. Inst. 3. i.*

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## P R E F A C E.

**I**T is recorded, that a *Lacedemonian* Ambassador, being sent to *Corinth* with a Commission to conclude a Treaty of Friendship and Alliance, when he saw the Captains and Senators of that City playing at Dice, he returned home, saying, That he would not so much sully the Glory of the *Spartans*, as that it should be said they had made a League with Gamesters.—Hence this honest Heathen took every Man addicted to Gaming for a Fool or a Knaves, and therefore declined any Dealings with either Character.

The Perniciousness of Gaming was so well understood by the grand Imposter *Mahomet* \*, that he thought it necessary

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\* If Christians have not Humility enough, let them, at least, have Pride enough to be shamed out of this detestable Vice, by the Example of Pagans and Mahometans. Anon.

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to prohibit it expressly in the Alcoran ; not as a Thing in itself naturally Evil, but only morally so, as it is a Step to the greatest Vices. For whilst we captivate ourselves to chance, we lose our Authority over our own Passions, being exalted to immoderate Desire, excessive Hope, and an alternate Succession of Joy and Grief. We stand or fall at the uncertain Cast of the Dice, or the turning up of a Card. We are slaves to the feeblest Wishes, which if they succeed not, we grow furious, profligate, and impious ; banishing all Prudence, Temperance, and Justice ; we become rash, and fit for the blackest Crimes. Hence the Cheats and Quarrels, Blasphemies, Duels, and Suicide amongst Men ; and among women (Shame to the lovely Sex !) neglect of domestic Business, unlimited Freedom, and indecent Passion : And lastly, The dangerous Inlet to all Lewdness. “ *Quod non habet in crumenâ luat corpore.*” Hence it is observed, agreeable to the Aphorism of Hippocrates, that “ Women are never bald or gouty, but in one singular case.” For, by copying the Examples and Liberties of Men, they partake alike of their Diseases and Vices. They sit up, they drink, they intrigue, they game ; and thereby have well-nigh lost the

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the Advantage and Innocence of their Sex.

History informs us, that *Demades of Athens* condemned an Upholder to Death, because he wished to make himself an early Fortune by his Trade, which could not be done but by a great mortality : How much more then deserves the Gamester to suffer, who preys upon the Fortune and Distress of his Fellow-Creatures.

If that orthodox and accurate writer Mr. *Alexander Cruden* and his Concordance are to be believed, the Words *Gaming*, *Cards*, or *Dice*, are not once mentioned in all Holy Writ (Names and Diversions to which the Prophets and Primitive Fathers were utter Strangers). But in the very Place of *Gaming*, Mr. *Cruden* gives us the Word *Gangrene*, with a very proper Comment, in the Place of the Word *Gamesters*, viz. “*Their Word will eat as doth a Gangrene.*”

*Res est severa voluptas*, says a modern Essayist, was never better verified than in *Gaming*. Pleasure ought to be the Refinement of a Gentleman. It is a Matter of Taste and Sense, requiring Parts, Genius, and Manners, and is not to be found in the low Amusements of the Great Vulgar, or the small People of Con-

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Condition should be more distinguished by the elegant Choice of their Satisfactions, than by their Dress and Equipage.

Cards, in this Age, are become the universal Mode of the whole People, who pique themselves upon being intelligent and polite ; and yet the best that can be said of them is, that they make People easy, by allowing them to be dull, and superseding the Necessity of their being entertaining ; this diversion may not be improperly called, The Stratagem of the shallow and the weak, to raise themselves to a Level with the wise ; for Gaming is no more than a Suspension of the Understanding, a continual Conflict of the lowest and basest Passions ; and if there be some Skill required in some Species of it, Men who do not discover common Sense in other Things, often excel in it. Yet for this, Gentlemen forego their Distinctions of Birth and Education ; waste their Time in the most trifling Amusements ; and bury the noblest Faculties in the meanest Employments.

There is a story extant of the great Mr. *Locke*, that being invited to make a Party with a Company of the highest Rank in Fortune and Genius, and hearing

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ing Cards called for, as soon as Dinner was over, he retired thoughtful to a Window; and being asked the Reason of his Seriousness, replied, " He had not slept the foregoing Night for the Pleasure their Lordships had given him leave to expect from that Day's Conversation with Men of the first Character for Sense and Learning, and hoped his Sorrow for his Disappointment would be forgiven him." And upon this Remonstrance the Game was thrown up, and Conversation restored.

The Spirit of Gaming has always been considered of so destructive a Nature, as to occasion constant Complaints and Strictures in all Ages. Every wise Nation has provided Remedies against it. The *Roman* Laws were very severe against the Game of Dice, which was strictly forbidden at all Times, except only during the Saturnalia. But the Corruption of the People, and the ill Examples of several Emperors, particularly *Augustus* and *Claudius*, brought it afterwards into such Vogue, that the best Writers are very severe in their Censures of it.

In Imitation of this Custom, by the Statute 33 Hen. 8. no Artificer, Apprentice, Labourer, or Servant was allowed

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lowed to play at any Game; except in the *Christmas* Holidays, and then only in their Master's House or Presence, which exclusive privilege and Exemption, by late Acts to prevent Gaming, is reserved to the King's Palace.

But as in ancient *Rome*, so in *Britain*, the bad Examples of those in Authority, has introduced a general Spirit of Gaming amongst all Degrees and Ranks of People. It is true, we have several excellent Statutes, and very severe Laws against that dangerous and destructive Vice; but they are seldom put in Execution amongst the Great: That idol Spirit and Notion of Honour (to which, Fame, Fortune, and Life, are too often devoted and sacrificed) supersedes every rational Measure of Preservation and Redress amongst the Nobility; whilst the Ignorance of Law, and of the Means of Relief in Youth, and the inexperienced Plebeian, (who fall a Victim and Prey to the knowing and adept Gambler,) added to the literal and political Blindness of Justice, in the very Heart and Centre of such lawless Revels, may account for the enormous Growth of this Hydra-headed Monster.

Public Gaming might easily be suppressed, and public Cheats and Sharpers brought

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brought to condign Punishment, if Magistrates would do their Duty, and if, Proof against all the Artillery of Corruption, they would dispense impartial Justice. And to prevent private Gaming, the *Legislature* (as will be shewn hereafter) have done all in their Power to check its fatal and pernicious Consequences ; so that it is now *their own Fault* (and perhaps the greater Crime) who, after becoming the Dupe and Prey of Cheats and Sharpers, prefer the Discharge of Debts of false Honour, and the Ruin of their Families, to the payment of honest and *bona fide* Creditors.

There is another Species of Gaming, which, though innocent and lawful in itself and its Institution, hath of late Years been carried to a most excessive Height, and attended with very prejudicial consequences, which, from a Series of Experience and Observation, I could illustrate and manifest the Truth of, but as an Admirer of that Work of the creation, obviously calculated by all-wise and all-bountiful Providence for the special Use and Exercise of Racing, I choose rather to omit it ; and to avoid any imputation of personal or particular Reproach, to borrow the whole Animadversions

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versions on this Subject from an old Craftsman.

" The Design of Royal Plates was to encourage a strong Breed of Horses, for which there are several Laws now in Force ; but I question whether the general Prevalence of this Sport, and particularly what are called Matches, have not rather spoiled the Breed than mended it. But the greatest Misfortune is, that what was originally intended only for the Exercise, Use, and Diversion, is now turned into a downright System of Gaming, and subject to as many Frauds as Cards or Dice. Besides, the Expence attending it, according to the modern Fashion of keeping up large Studs and Strings of Horses, is grown to such a Height that few Pockets are able to support it, without running in Debts, or making it up with a Place or Pension. But the greatest Mischief of all is, that the Examples of the Great, in this particular likewise, are followed by the Little. It is common at Newmarket to see not only young Gentlemen of small Fortunes, but even Tradesmen and Mechanics who have left their Counters and Shopboards, betting with the first Peers of the Realm. His Grace and old Nan

of

of *Deptford* are there Hail-fellow well met. Nay, the contagion has spread so far, that there is hardly a little Town or Village in *England*, which does not pick up Contributions for a Horse-Race in order to draw Crowds of People together, and drain their Pockets."

In answer to this last Charge, there is a very salutary Law and severe Penalty to restrain the licentious Spirit of Petty-Racing for (what is vulgarly called) Leather-Plates ; for Particulars whereof the Reader is referred to the Statute of the 13th of his late Majesty. And for the Use and Abuse of this Law, individual Subjects, not the Legislature, are responsible.

Thus engaged in the pleasing Subject of that very useful and valuable Animal THE HORSE, I crave an Indulgence to close it with an Abstract from a Translation of a very curious Piece of Greek Poetry, for the Sake of its Antiquity, more especially as that masterly Poet and Sportsman Mr. *Somerville*, in his truly admirable Poem of the *Chace*, hath been thought too concise and defective in the Description of the Rules and Proportions of Symmetry and Power.

Much famous is the *Arabian* \* Breed, but best,  
The Horse whom Sportsmen prize above the rest,  
Is he, whose Shape's with these Perfections crown'd :  
Light let him shift his Limbs, and rid the Ground ;  
Above his Neck, his Head should something rise,  
With Looks erect, full fifteen Hands his Size ;  
His Chop shou'd to his Neck below incline,  
And his large Front with sprightly Vigour shine ;  
Let waving Tops adown his Foretop fly,  
And Brills imbrown'd shou'd edge his broad bright Eye ;  
Wide Nostrils, ample Mouth, and little Ears,  
Arch'd be his Neck, and fledg'd with floating Hairs,  
Like a plum'd Helmet when it nods its Crest ;  
Broad back'd, long body'd, spacious be his Chest,  
Let his strong Back be furrow'd with his Chine,  
And run his Tail out in a brushy Line ;  
Clean be his Thighs, and Sinewy, but below  
Straight, long, and spare the well-turn'd Shanks should shew,  
Lean be his Legs, and nimble as the Stag's,  
With whom in Speed the fleeting Tempest flags :  
Firm let him tread and just ; moving along  
Upon a well grown solid Hoof and strong.  
Such be the Horse to bear me to the Field,  
That shares the Sport with Fire, and Pride impell'd.

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\* *The Velocity of Horses in the Race, philosophically considered by Mons. Condamine, from his Tour to Italy.*

" The Spectacle which at present forms the Amusement of the People at *Rome*, retains nothing

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nothing of the Barbarity of the antient Combats of Gladiators. Some of the Princes and Noblemen amuse themselves by keeping Horses purely for the Course—Not as in *England*, backed by a Rider, but alone, at full Liberty, and entirely delivered up to their natural Ardor, and that Kind of Emulation which the Concourse of People assembled seems to inspire—Eight or ten Horses, commonly Barbs, of a small size and mean Figure, retained on the same Line by a Rope, extended about the Height of their Breast, set off at the Instant when they let this Rope fall.—In the Races at *Carnival Time*, the Course is in the long Street at *Rome*, thence called *Race-street*—It is then gravelled over—Its Length is 865 Toises.—I observed twice by means of a Watch for Seconds, and the Help of a Signal, that this Distance was run over in 141 Seconds, which makes near 37 Feet, a Second.—A little Reflection will make this Speed appear very considerable.

We cannot suppose more than two Leaps, or Progressions on Gallop to one Second, seeing that each of these Leaps requires at least three very distinct Points of Time, viz. that in which the Horse lifts himself from the Ground, that in which we see him cleaving the Air, and that in which he descends—And that these two Bounds thus supposed to be made in every Second requires six definitive moments; a Period scarce perceptible in so short a Space of Time. These Horses which are but of an inconsiderable Size, and whose Swiftness every Second is equal to 37

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Feet, pass then at each Bound, over a Space of more than 18 Feet, which is very near equal to four Times the Length of their Body, taken from the Breast to the Tail.—It is true indeed, that this Length is more than doubled by the Extension which their outstretched Gallop gives their Limbs before and behind—All this considered, how can the Fleetness of the *English* Horses be by a great Deal greater, as it is known in Reality to be?

The late M. *Dufay* writ in 1737 from *Newmarket*, that the Course there of four *English* Miles (of 1760 Yards each) had been completed in less than 8 Minutes by 4 or 5 Seconds—These Miles are 826 of our Toises, which makes more than 41 Feet  $\frac{2}{3}$  in a Second, or near 5 Feet more than the Barbs at *Rome*. And we must also remark here, that these latter run at full Liberty, whereas the *English* Horses are burthened with the Weight of a Rider. This Fleetness, however, of 41 Feet  $\frac{2}{3}$ , is still but an ordinary Degree of Swiftness there, inasmuch as of 10 Horses that ran together, the very hindmost of them was no more than 12 or 15 paces from the End of the Course.—Besides it is asserted, that the same Course has been frequently run over in 6 Minutes and 6 Seconds; and this Swiftness which would amount to more than 54 Feet in a Second, is to that of the Barbs, nearly as three to two—Instead of about one *English* Mile, to which the Course at *Rome* is limited, that of *Newmarket* is four Miles, a Space too long for the Swiftness of any Horse

to

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to preserve itself through on a sensible Equality—It is evident, that this Swiftness must abate towards the End of the Course, and consequently that in the first Moments of the Race, its Maximum must be at least 54 Feet in a Second.—We are likewise assured, that a famous Horse, called *Sterling*, hath sometimes performed the first Mile in a Minute, which would make 52 Feet  $\frac{1}{2}$  in a Second—  
A Degree of Swiftness inconceivable.

It should be sufficient that this Swiftness lasted only a few Seconds, to enable us to say he went swifter than the Wind, as it is seldom that the most violent Wind makes as much Ground in the Time—For the greatest Swiftness at Sea was never known to exceed six Marine Leagues in an Hour (eighteen Miles); and if we suppose the Vessel thus borne, partakes one third of the Swiftness of the Wind which drives it, the latter would still go no more than 80 Feet a Second.

### Elucidations on this Subject from Dr. Maty.

There are two Courses at *Newmarket*, the long and the round—The first is exactly four English measured Miles, and 380 Yards, or more, (that is to say) 7420 English Rods, or 3482 French Toises—The second is not four English Miles, by 400 Yards (that is to say) it is 6640 Yards, or 3116 French Toises.—*Childers*, the swiftest Horse ever remembered, has run the first Course in 7 Minutes and a half; and the second, in 6 Minutes and 40 Seconds, which amounts to 45 Feet 5, or 9 Inches French in the second; whereas all other Horses since the foregoing, take up at

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least 7 Minutes and 50 Seconds, in completing the first and long Course, and 7 Minutes only in the round, which is 44 Feet, 5 or 6 Inches the second.—It is commonly supposed, that these Coursers cover at every Bound a Space of Ground, in length about 24 *English* Feet.—Hence the Swiftness of the *English* to that of the *Barbs* is very nearly as four to three.

To the above is added (by way of Note) the Method of Racing at *Florence*.

In order to increase the Speed of Horses which there also run alone without a Rider to direct them, they place a large Piece of Leather, somewhat in form of the Wings of a Saddle on their Backs, stuck full on the Inside with very sharp Prickles.—The Barrier being formed, and every Thing ready for the Race, the Spectators immediately set up a loud Shout, at the Noise of which the Horses affrighted start off, and the Prickles in the flapping Leather on their Backs still continuing to goad them more and more as they run; their Speed is thus urged to the highest Pitch their Nerves will allow, till the Goal, at length, happily puts an End to it.”

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From this Digression I return to the Subject-Matter contained in this Work; from which is claimed no other Merit than a Compilation or Digest, the whole (or chiefly the whole) being the public Laws of the Kingdom, and the Reports and Readings of Cases, which, for the Benefit

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Benefit of Society and its Members, are now first collected into one summary Point of View ; and as to the Manner of that, and the Matter of what little is advanced from private Experience and Judgment, the Author hopes to avoid the Censure passed upon a great Orator, who, as it was charged, “ Had a very acute wit, but rather pricked the Subject he handled, than pierced it thorough.”

To those Lords and Gentlemen, who are a considerable Body of the Legislative Power, and who are doubtless \* possessed of the Letter and Knowledge of the Laws, particularly the Statutes, a Labour of this Kind may be deemed a Work of Supererogation and unnecessary ; but for the Authority and Utility of this Method of Collection and Digest, I might quote and enumerate many Publications of the same Kind, on Variety of Subjects (such are the Laws of Tenants, Tithes, Sheriffs, Game, Bankrupts, Wills, Consanguinity, *cum multis aliis*). But were the public and printed

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\* *Est Senatori necessarium nosse Rempublicam ; idque late patet. Genus hoc omne sententiae, diligentiæ, memoria est, sine quo paratus esse Senator nullo pacto potest.* Tull. de Legibus 111. 18.

Laws,

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Laws, from an extensive Knowledge or Study thereof, deemed useless to a few ; yet I cannot doubt but that the private Cases and Opinions of the most eminent of the Profession, founded upon the modern Rules of Practice, and the Determinations of the Courts of Justice on Construction of the late Gaming Acts ; (Opinions that every noble and learned Reader will suggest were first obtained at a very great Expence;) and which added to the Ease and Direction of Reference, hereby given to the various Readings and Cases on the Subject, will altogether be allowed fully to compensate for its Purchase. And most especially to those whose large Fortunes and Inclinations lead them to the Exercise and Practice of *Gaming* ; to whom the subsequent Hints of Admonition may be some thing or other more serviceable than a *Hoyle*, or a *Heber*.

Further, a Publication of this Kind is doubly necessary and cautionary to the inferior Class of Mankind, who, from their Station and Fortune, cannot be supposed to be privy to the numerous and salutary Laws and Penalties, which, from the common Habit and prevalent Custom of *Gaming*, are daily, and perhaps ignorantly incurred. On which general

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neral Reason, or rather Excuse of Ignorance, it hath been a Matter of great, and seemingly just Complaint, that all new Laws, especially the Penal ones, are not proclaimed in Churches, or otherwise notoriously promulgated to public Notice. Whereas “ by our Laws and Constitutions, every one is bound to take notice of that which is done in Parliament, and the Law intends that every Person hath Notice thereof ; for as the Parliament represents the Body of the whole Realm, it is not requisite any Proclamation be made thereof.” Moreover the Multiplicity of our Statute Laws also seems to render their notorious Publication more necessary, the Knowledge thereof being thereby necessarily confined to the Profession, or to those of great Study and Application ; and indeed our *Penal* Laws are so numerous as to be deemed by some a public Grievance ; but this (says an Adept in Law and Politics) may be an Inconvenience unavoidably resulting from the extensive Concerns of a commercial Kingdom ; for though a State confined within a narrow Sphere of Action may be very vicious, yet the Modes of Vice will not be greatly diversified : Offences will multiply as the Pursuits and Occupations of

Man-

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Mankind grow more various and diffusive ; and in a Kingdom so jealous of its Liberty, as to leave as little as possible to discretionary Power, every Offence must be precisely described ; therefore it is well observed, that *the Multiplicity of our Laws is the Price we pay for our Freedom.*

See Lord Cok's Preface to his 4th Report, and Lord Keeper Bacon's Speech on this Subject.

It is also too true, that our present System of criminal Laws are very unequal and cruel, all Degrees of Offence being confounded, and all Proportion of Punishment destroyed : Whence many Delinquents are with cruel Precipitancy, hurried out of the World for flight Transgressions, who, by prudent and adequate Correction, might be made useful to themselves and to Society : Whereras Punishments should, as nearly as possible, bear Proportion to the Offence committed, which ought to be the guiding Principle of Law, as it is of Reason and natural Justice : The true Axiom of all Government and Laws being rather to prevent Crimes, than to punish Criminals ; and such is the Author's View in this Publication.

To conclude, with a short Address to those noble Lords who compose the major Part of the Legislature, who are not only by Birth, hereditary Counsellors of the

the Crown, but also Arbiters of the Property of all their Fellow-subjects, and that too in the Dernier Resort.

From you, my Lords, who are bound to decide the nicest and most critical Points of Law: To examine and correct such Errors as have escaped the most experienced Sages in the Profession — You, my Lords, whose Sentence is final, decisive, and irrevocable, without Appeal, Correction, or even a Review; and to whose Authority the Courts of Justice conform, and give Judgment — For these Reasons, from you, my Lords, is humbly implored the Patronage of a *small Branch* of that very extensive Science, which distinguishes the Criterion of Right and Wrong; which teaches to establish the one, and to prevent, punish, and redress the other; which employs in its Theory the noblest Faculties of the Soul, and exerts in its Practice the cardinal Virtues of the Heart. A Science, which is universal in its Use and Extent, and whereof you, my Lords, are the constitutional Guardian and Parent; and peculiarly of this Subject, so nearly and closely applicable to the Preservation of the Morals and Property of your Heirs and Descendants.

Vide Dr:  
Blackstone,  
on the Study  
of the Law,  
prefixed to  
his Analysis.

## P O S T S C R I P T.

The Author first intended to have given all the Reports and Cases extant on Frauds and Deceits (as well as Gaining) but as that would have occasioned Delay, and an Increase of Bulk and Expence, it is thought more adviseable to omit it, giving the Reader this general Advice and Admonition, that in Case of any flagrant Fraud or Imposition for which no similar Case is given, or Remedy prescribed, any Gentleman by referring to the proper Titles in the Law Books (particularly of Deceit in *Viner's Abridgement*) may see the Subject more copiously illustrated. And as to the Regulation of our own Conduct, the Knowledge contained in this little Tract, blended in Practice with the holy Precept of *Doing unto all Men as we would they should do unto us*, will scarce ever fail to steer us clear of the Rock of Penal Laws and judicial Punishments.

Sutton. C.  
29 Sept. 1764.

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††† W. Owen undertakes to print and publish Law Books for Gentlemen on reasonable Terms.

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# A C T S

## AGAINST

# GAMING, &c.

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16 Car. 2. cap. 7.

*An Act against deceitful, disorderly, and excessive Gaming.*

W<sup>H</sup>E<sup>R</sup>EAS all lawful Games and Exercises should not be otherwise used, than as innocent and moderate Recreations, and not as constant Trades or Callings to gain a Living, or make unlawful Advantage thereby ; (2) And whereas by the immoderate Use of them, many Mischiefs and inconveniences do arise, and are daily found, to the maintaining and encouraging of sundry idle, loose and disorderly persons in their dishonest, lewd, and dissolute Course of Life, and to the circumventing, deceiving, coufening and debauching of many of the younger Sort,

B both

The Inconvenience of immoderate and unlawful Use of Gaming.

*Acts against Gaming, &c.*

both of the Nobility and Gentry, and others, to the Loss of their precious Time, and the utter Ruin of their Estates and Fortunes, and withdrawing them from noble and laudable Employments and Exercises:

II. Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, that if any Person or Persons of any Degree or Quality whatsoever, at any Time or Times after the Nine and twentieth Day of *September*, which shall be in the Year of our Lord God one thousand six hundred sixty and four, do or shall by any Fraud, Shift, Cousenage, Circumvention, Deceit, or unlawful Device, or Ill practice whatsoever, in playing at or with Cards, Dice, Tables, Tennis, Bowls, Kittles, Shovelboard; or in or by Cock-fightings, Horse-races, Dog-matches, or Foot-races, or other Pastimes, Game or Games whatsoever, or in or by bearing a Share or Part in the Stakes, Wagers, or Adventures, or in or by betting on the Sides or Hands of such as do or shall Play, Act, Ride, or Run, as aforesaid, win, obtain, or acquire to him or themselves, or to any other

Deceits and  
Cousenages  
in Gaming.

other or others, any Sum or Sums of Money, or other valuable Thing or Things whatsoever ; that then every Person and Persons so offending, as aforesaid, shall *ipso facto* forfeit and lose treble the Sum or Value of Money, or <sup>The Penal-</sup> other Thing or Things so won, gained, obtained or acquired ; the one Moiety thereof to our Sovereign Lord the King, his Heirs and Successors, and the other Moiety thereof unto the Person or Persons grieved, or who shall lose the Money, or other Thing or Things so gained ; so as every such Loser and Person grieved in that Behalf, do or shall prosecute and sue for the same within six Kalendar Months next after such Play : (3) And in Default of such Prosecution, the same other Moiety to such Person or Persons as shall or will prosecute or sue for the same within one Year next after the said six Months expired : (4) And that the said Forfeitures shall or may be sued for, or recovered by Action of Debt, Bill, Plaintiff or Information, in any of his Majesty's Courts at *Westminster*, wherein no Essoign, Protection or Waager at Law shall be allowed : (5) And that all and every such Plaintiff or Plaintiffs, Informer or Informers, shall in every such Suit and Prosecution have and recover his and their treble Costs against

*How to be  
sued for and  
recovered.*

*Acts against Gaming, &c.*

the Person offending and forfeiting, as aforesaid; any Law, Statute, Custom, or Usage to the contrary in any wise notwithstanding.

Prevention  
of excessive  
and immo-  
derate Ga-  
ing.

III. And for the better avoiding and preventing of all excessive and immoderate Playing and Gaming for the Time to come; (2) Be it further ordained and enacted by the Authority aforesaid, that if any Person or Persons shall at any Time or Times after the Nine and twentieth Day of *September* aforesaid play at any of the said Games, or any other Pastime, Game or Games whatsoever (other than with and for ready Money), or shall bett on the Sides or Hands of such as do, or shall play thereat, and shall lose any Sum or Sums of Money, or other Thing or Things so played for, exceeding the Sum of One hundred Pounds at any one Time or Meeting, upon Ticket or Credit, or otherwise, and shall not pay down the same at the Time when he or they shall so lose the same, the party and parties who loseth or shall lose the said Monies, or other Thing or Things so played, or to be played for, above the said Sum of One hundred Pounds, shall not in that Case be bound or compelled, or compellable to pay or make good the same; (3) but the Contract and Contracts for the

the same, and for every Part thereof, and all and singular Judgments, Statutes, Recognizances, Mortgages, Conveyances, Assurances, Bonds, Bills, Specialties, Promises, Covenants, Agreements, and other Acts, Deeds and Securities whatsoever, which shall be obtained, made, given, acknowledged or entered into for Security or Satisfaction of or for the same, or any Part thereof, shall be utterly void and of none Effect : (4) And that the Person or Persons so winning the said Money, or other Things, shall forfeit and lose treble the Value of all such Sum and <sup>The Penal</sup>ty. Sums of Money, or other Thing or Things, which he shall so win, gain, obtain or acquire, above the said Sum of One hundred Pounds, (5) the one Moiety thereof to our said Sovereign Lord the King, his Heirs and Successors ; and the other Moiety thereof to such Person or Persons as shall prosecute or sue for the same within one Year next after the Time of such Offence committed ; (6) and to be sued for by Action of Debt, Bill, Plaintiff, or Information in any of his Majesty's Courts of Record at Westminster, wherein no Essoign, Protection, or Wager of Law shall be allowed : (7) And that every such Plaintiff or Plaintiffs, Informer or Informers,

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shall in every such Suit and Prosecution have and receive his treble Costs against the Person and Persons offending and forfeiting, as aforesaid; any Law, Custom or Usage to the contrary notwithstanding.

35 Eliz. cap. 12.

*An Act to avoid Horse-stealing.*

Co. Inst. 2.

p. 713.

Fairs 7.  
Sellers of  
Horse in  
Fairs or  
Markets,  
must be  
known to  
the Toll-  
taker, or  
some other  
who will  
avouch the  
Sale which  
shall be en-  
tered into the  
Toll-book,  
&c.

2 & 3 P. &  
M. 7.

Palmer 486,  
487.

W<sup>H</sup>E<sup>R</sup>EAS through most Coun-  
ties of this Realm, Horse-steal-  
ing is grown so common, as neither in  
Pastures or Close, nor hardly in Stables,  
the same are to be in Safety from Steal-  
ing, which ensueth by the ready Buying  
of the same by Horse-couriers and others,  
in some open Fairs or Markets far distant  
from the Owner, and with such Speed,  
as the Owner cannot by pursuit possibly  
help the same; (2) and sundry good  
Ordinances have heretofore been made  
touching the Manner of Selling and  
Tolling of Horses, Mares, Geldings and  
Colts in Fairs and Markets, which have  
not wrought so good Effect for the re-  
pressing or avoiding of Horse-stealing,  
as was expected:

II. Now for a further Remedy in that  
Behalf, be it enacted by the Authority  
of this present Parliament, that no Per-  
son

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son, after twenty Days next after the End of this Session of Parliament, shall in any Fair or Market sell, give, exchange or put away any Horse, Mare, Gelding, Colt or Filly, unless the Toll-taker there, or (where no Toll is paid) the Book-keeper, Bailiff, or the chief Officer of the same Fair or Market, shall and will take upon him perfect Knowledge of the Person that so shall sell, or offer to sell, give or exchange any Horse, Mare, Gelding, Colt or Filly, and of his true Christian Name, Surname, and Place of Dwelling or Residency, and shall enter all the same his Knowledge in a Book there kept for Sale of Horses; (2) A sufficient and credible Person shall avouch the Horse-seller, or else, that he so selling, or offering to sell, give, exchange, or put away any Horse, Mare, Gelding, Colt or Filly, shall bring unto the Toll-taker, or other Officer aforesaid of the same Fair or Market, one sufficient and credible Person that can, shall or will testify and declare unto and before such Toll-taker, Book-keeper, or other Officer, that he knoweth the Party that so selleth, giveth, exchangeth or putteth away such Horse, Mare, Gelding, Colt or Filly, and his true Name, Surname, Mystery, and Dwelling-place, and there enter, or cause to be entered in the Book of the said Toll-taker or Officer, as well the true

Christian

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The Price  
of the Horse  
shall be en-  
tered into the  
Toller's  
Book,

Christian Name, Surname, Mystery, and Place of Dwelling or Residency of him that so selleth, giveth, exchangeth, or putteth away such Horse, Mare, Gelding, Colt or Filly, as of him that so shall testify or avouch his Knowledge of the same Person, (3) and shall also cause to be entred the very true Price or Value that he shall have for the same Horse, Mare, Gelding, Colt or Filly so sold : (4) And that no Person shall take upon him to avouch, testify or declare, that he knoweth the Party that so shall offer to sell, give, exchange or put away such Horse, Mare, Gelding, Colt or Filly, unless he do indeed truly know the same Party, and shall truly declare to the Toll-taker, or other Officer aforesaid, as well the Christian Name, Surname, Mystery, and Place of Dwelling and Residency of himself, as of him of and for whom he maketh such Testimony and Avouchment : (5) And that no Toll-taker, or other Person keeping any Book of Entry of any Sales of Horses in Fairs or Markets, shall take or receive any Toll, or make Entry of any Sale, Gift, Exchange, or putting away of any Horse, Mare, Gelding, Colt or Filly, unless he knoweth the Party that so selleth, giveth, exchangeth or putteth away any such Horse, Mare, Gelding,

Gelding, Colt or Filly, and his true Christian Name, Surname, Mystery, and Place of his Dwelling or Residency, or the Party that shall and will testify and avouch his Knowledge of the same Person so selling, giving, exchanging, or putting away such Horse, Mare, Gelding, Colt or Filly, and his true Christian Name, Surname, Mystery, and Place of Dwelling or Residency, and shall make a perfect Entry into the said Book, of such his Knowledge of the Person, and of the Name, Surname, Mystery, and Place of the Dwelling or Residency of the same Person, and also the true Price or Value that shall be *bona fide* taken or had for any such Horse, Mare, Gelding, Colt or Filly so sold, given, exchanged, or put away, so far as he can understand the same, (6) and then give to the Party so buying, or taking by Gift, Exchange, or otherwise, such Horse, Mare, Gelding, Colt or

A Note in  
Writing  
shall be gi-  
ven to the  
Buyer.

Filly, requiring and paying Two-pence for the same, a true and perfect Note in Writing, of all the full Contents of the same, subscribed with his Hand, (7) on Pain that every Person that so shall sell, give, exchange or put away any Horse, Mare, Gelding, Colt or Filly, without being known to the Toll-taker, or other Officer aforesaid, or without bringing such

The Penality of the Person offending in any of the Cases aforesaid.

Every Sale otherwise made, shall be void.

The Justices of Peace may hear and determine the offences aforesaid.

such a Voucher or Witness, causing the same to be entered, as aforesaid; and every Person making any untrue Testimony or Avouchment in the Behalf aforesaid, and every Toll-taker, Book-keeper or other Officer of Fair or Market aforesaid, offending in the Premisses contrary to the true Meaning aforesaid, shall forfeit for every such Default the Sum of five Pounds; (8) but also that every Sale, Gift, Exchange, or other putting away of any Horse, Mare, Gelding, Colt, Filly, in Fair or Market, not used in all Points according to the true Meaning aforesaid, shall be void; (9) the one half of all which Forfeitures to be to the Queen's Majesty, her Heirs and Successors, and the other half to him or them that will sue for the same before the Justices of Peace, or in any of her Majesty's ordinary Courts of Record, by Bill, Plaintiff, Action of Debt, or Information; in which no Essoin or Protection shall be allowed.

III. And be it further enacted, that the Justices of Peace of every Place and County, as well within Liberties as without, shall have Authority in their Sessions, within the Limits of their Authority and Commission, to enquire, hear, and determine all Offences against this Statute,

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Statute, as they may do any other Matter triable before them.

IV. And be it further enacted, that if any Horse, Mare, Gelding, Colt or Filly, after twenty Days next ensuing the End of this Session of Parliament, shall be stollen, and after shall be sold in open Fair or Marker, and the same Sale shall be used in all Points and Circumstances, as aforesaid, that yet nevertheless, the Sale of any such Horse, Mare, Gelding, Colt or Filly, within six Months next after the Felony done, shall not take away the Property of the Owner from whom the same was stollen, so as claim be made within six Months by the Party from whom the same was stollen, or by his Executors or Administrators, or by any other, by any of their Appointment, at or in the Town or Parish where the same Horse, Mare, Gelding, Colt or Filly shall be found, before the Mayor, or other Head Officer of the same Town or Parish, if the same Horse, Mare, Gelding, Colt or Filly happen to be found in any Town Corporate, or Market Town, or else before any Justice of Peace of that County near to the Place where such Horse, Mare, Gelding, Colt or Filly shall be found, if it be out of a Town Corporate, or Market Town, (2) and so as Proof be made within

The Owner  
may redeem  
a Horse  
stollen from  
him within  
six Months  
after, paying  
the Price.

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within forty Days then next ensuing, by two sufficient Witnesses, to be produced and deposed before such Head-Officer or Justice, (who by Virtue of this Act shall have Authority to minister an Oath in that Behalf) that the Property of the same Horse, Mare, Gelding, Colt or Filly so claimed, was in the Party, by or from whom such Claim is made, and was stollen from him within six Months next before such Claim of any such Horse, Gelding, Mare, Colt or Filly, (3) but that the Party, from whom the said Horse, Mare, Gelding, Colt or Filly was stollen, his Executors or Administrators, shall and may at all Times after, notwithstanding any such Sale or Sales in any Fair or Market thereof made, have Property and Power to have, take again, and enjoy the said Horse, Mare, Gelding, Colt or Filly, upon Payment, or Readiness, or offer to pay the Party that shall have the Possession and Interest of the same Horse, Mare, Gelding, Colt or Filly, if he will receive and accept it, so much Money as the same Party shall deposite and swear before such Head-Officer, or Justice of Peace, (who by Virtue of this Act shall have Authority to minister and give an Oath in that Behalf) that he paid for the same *bona fide*, without Fraud or Collusion; any Law, Statute,

or

or other Thing to the contrary thereof  
in any wise notwithstanding.

V. And be it further enacted by the Authority aforesaid, that after twenty Days after the End of this Session of Parliament, not only all Accessaries before such Felony done, but also all Accessaries after such Felony, shall be prived and put from all Benefit of their Clergy, as the Principal by Statute heretofore made, is or ought to be.

An Accessary to a Horse-stealer shall not have his Clergy.  
St. 1 Ed. 6.  
<sup>12.</sup>  
<sub>2 & 3 E. 6.</sub>  
<sup>33.</sup>

## 9 Ann. cap. 14.

*An Act for the better preventing of excessive and deceitful Gaming.*

WHEREAS the Laws now in Force for preventing the Mischiefs which happen by Gaming, have not been found sufficient for that Purpose; therefore, for the further preventing of all excessive and deceitful Gaming, Be it enacted by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That from and after the first Day of May one thousand seven hundred and eleven, all Notes, Bills, Bonds, Judgments, Mortgages

gages, or other Securities or Conveyances whatsoever, given, granted, drawn, or entred into, or executed by any Person or Persons whatsoever, where the whole or any Part of the Consideration of such Conveyances or Securities shall be for any Money, or other valuable Thing whatsoever, won by Gaming or Playing at Cards, Dice, Tables, Tennis, Bowls, or other Game or Games whatsoever, or by Betting on the Sides or Hands of such as do game at any of the Games aforesaid, or for the reimbursing or repaying any Money knowingly lent or advanced for such Gaming or Betting, as aforesaid, or lent or advanced at the Time and Place of such Play, to any Person or Persons so Gaming or Betting, as aforesaid, or that shall, during such Play, so play or bett, shall be utterly void, frustrate, and of none Effect, to all Intents and Purposes whatsoever; any Statute, Law, or Usage to the contrary thereof in any wise notwithstanding: And that where such Mortgages, Securities, or other Conveyances, shall be of Lands, Tenements, or Hereditaments, or shall be such as incumber or affect the same, such Mortgages, Securities, or other Conveyances, shall enure and be to and for the sole Use and Benefit of, and shall

shall devolve upon such Person or Persons as should or might have, or be entitled to such Lands, Tenements, or Hereditaments, in case the said Granter or Granters thereof, or the Person or Persons so incumbring the same, had been naturally dead, and as if such Mortgages, Securities, or other Conveyances had been made to such Person or Persons so to be entitled after the Decease of the Person or Persons so incumbring the same: And that all Grants or Conveyances to be made for the preventing of such Lands, Tenements, or Hereditaments, from coming to, or devolving upon such Person or Persons hereby intended to enjoy the same, as aforesaid, shall be deemed fraudulent, and void, and of none Effect, to all Intents and Purposes whatsoever.

And be it further enacted by the Authority aforesaid, that from and after the said first Day of *May* one thousand seven hundred and eleven, any Person or Persons whatsoever, who shall at any time or sitting, by Playing at Cards, Dice, Tables, or other Game or Games whatsoever, or by Betting on the Sides or Hands of such as do play at any of the Games aforesaid, lose to any one or more Person or Persons so playing or betting, in the

C 2 whole,

whole, the Sum or Value of ten Pounds, and shall pay or deliver the same, or any Part thereof, the Person or Persons so losing, and paying or delivering the same, shall be at Liberty, within three Months then next, to sue for and recover the Money or Goods so lost, and paid or delivered, or any Part thereof, from the respective Winner and Winners thereof, with Costs of Suit, by Action of Debt founded on this Act, to be prosecuted in any of her Majesty's Courts of Record, in which Actions or Suits, no Essoign, Protection, Wager of Law, Privilege of Parliament, or more than one Imparlane shall be allowed; in which Actions it shall be sufficient for the Plaintiff to alledge, that the Defendant or Defendants are indebted to the Plaintiffs, or received to the Plaintiff's Use, the Monies so lost and paid, or converted the Goods won of the Plaintiffs to the Defendants Use, whereby the Plaintiff's Action accrued to him according to the Form of this Statute, without setting forth the special Matter: And in case the Person or Persons who shall lose such Money, or other Thing, as aforesaid, shall not, within the Time aforesaid, really and *bona fide*, and without Covin or Collusion, sue, and with effect prosecute for the Money, or

or other Thing so by him or them lost and paid or delivered, as aforesaid, it shall and may be lawful to and for any Person or Persons, by any such Action or Suit, as aforesaid, to sue for and recover the same, and treble the Value thereof, with Costs of Suits, against such Winner or Winners, as aforesaid; the one Moiety thereof to the Use of the Person or Persons that will sue for the same, and the other Moiety to the Use of the Poor of the Parish where the Offence shall be committed.

And for the better Discovery of the Monies, or other Thing so won, and to be sued for and recovered, as aforesaid, it is hereby further enacted by the Authority aforesaid, that all and every the Person or Persons, who by Virtue of this present Act shall or may be liable to be sued for the same, shall be obliged and compellable to answer upon Oath such Bill or Bills as shall be preferred against him or them, for discovering the Sum and Sums of Money or other Thing so won at Play, as aforesaid.

Provided always, and be it nevertheless enacted by the Authority aforesaid, that upon the Discovery and Re-payment of the Money, or other Thing so to be discovered and repaid, as aforesaid, the Person or Persons who shall so

discover and repay the same, as aforesaid, shall be acquitted, indemnified and discharged from any further or other Punishment, Forfeiture or Penalty, which he or they may have incurred by the playing for, or winning such Money, or other Thing so discovered and repaid, as aforesaid; any former or other Statute, Law or Usage, or any Thing in this present Act contained to the contrary thereof, in any notwithstanding.

And be it further enacted by the Authority aforesaid, that if any Person or Persons whatsoever, at any Time or Times, after the said first Day of *May* one thousand seven hundred and eleven, do or shall, by any Fraud or Shift, Cosenage, Circumvention, Deceit, or unlawful Device, or ill Practice whatsoever, in playing at or with Cards, Dice, or any the Games aforesaid, or in or by bearing a Share or Part in the Stakes, Wagers or Adventures, or in or by betting on the Sides or Hands of such as do or shall play, as aforesaid, win, obtain or acquire to him or themselves, or to any other or others, any Sum or Sums of Money, or other valuable Thing or Things whatsoever, or shall at any one Time or Sitting, win of any one or more Person or Persons whatsoever, above the Sum or Value of ten Pounds, that then every

every Person or Persons so winning by such ill Practice, as aforesaid, or winning at any one Time or Sitting above the said Sum or Value of ten Pounds, and being convicted of any of the said Offences, upon an Indictment or Information to be exhibited against him or them for that Purpose, shall forfeit five Times the Value of the Sum or Sums of Money, or other Thing so won, as aforesaid ; and in case of such ill Practice as aforesaid, shall be deemed infamous, and suffer such corporal Punishment, as in cases of wilful Perjury ; and such Penalty to be recovered by such Person or Persons as shall sue for the same by such Action, as aforesaid.

And whereas divers lewd and dissolute Persons live at great Expences, having no visible Estate, Profession or Calling to maintain themselves, but support those Expences by Gaming only ; Be it therefore further enacted by the Authority aforesaid, that it shall and may be lawful for any two or more of her Majesty's Justices of the Peace, in any County, City or Liberty whatsoever, to cause to come or to be brought before them, every such Person or Persons within their respective Limits, whom they shall have just Cause to suspect to have no visible Estate, Profession or Calling to maintain themselvys by, but do for the most part support

support themselves by Gaming; and if such Person or Persons shall not make it appear to such Justices, that the principal Part of his or their Expences is not maintained by Gaming, that then such Justices shall require of him or them, sufficient Securities for his or their good Behaviour for the Space of twelve Months, and in Default of his or their finding such Securities, to commit him or them to the common Gaol, there to remain until he or they shall find such Sureties, as aforesaid.

And be it enacted by the Authority aforesaid, that if such Person or Persons so finding Sureties, as aforesaid, shall during the Time for which he or they shall be so bound to the good Behaviour, at any one Time or Sitting, play or bett for any Sum or Sums of Money, or other Thing, exceeding in the whole the Sum or Value of twenty Shillings, that then such Playing shall be deemed or taken to be a Breach of his or their Behaviour, and a Forfeiture of the Recognizance given for the same.

And for the preventing of such Quarrels as shall and may happen upon the Account of Gaming, Be it further enacted by the Authority aforesaid, that in case any Person or Persons whatsoever, shall assault and beat, or shall challenge,

or provoke to fight any other Person or Persons whatsoever, upon Account of any Money won by Gaming, Playing or Betting at any of the Games aforesaid, such Person or Persons assaulting and beating, or challenging, or provoking to fight such other Person or Persons upon the Account aforesaid, shall, being thereof convicted upon an Indictment or Information to be exhibited against him or them for that Purpose, forfeit to her Majesty, her Heirs and Successors, all his Goods, Chattels and personal Estate whatsoever, and shall also suffer Imprisonment without Bail or Mainprize, in the common Gaol of the County where such Conviction shall be had, during the Term of two Years.

Provided always, that nothing in this Act contained shall extend to prevent or hinder any Person or Persons from Gaming or Playing at any of the Games aforesaid, within any of her Majesty's Palaces of Saint James or Whitehall, during such Time as her Majesty, her Heirs or Successors, shall be actually Resident at either of the said two Palaces, or in any other Royal Palace, where her Majesty, her Heirs or Successors, shall be actually Resident, during the Time of such actual Residence, so as such Playing be not in any House, Lodging, or other

Part

Part of any of the said Palaces, the Freehold or Inheritance whereof is or shall be out of the Crown, or is or shall be in Lease to any Person or Persons, during such Time as such Freehold and Inheritance shall be out of the Crown, or such Lease shall continue, and so as such Playing be for ready Money only.

12 Geo. 2. cap. 28.

*An Act for the more effectual preventing of excessive and deceitful Gaming.*

Preamble,  
reciting the  
Acts 10 &  
11 W. 3.

WHEREAS in and by an Act of Parliament made and passed in the tenth and eleventh Years of the Reign of his late Majesty King William the Third, intituled, *An Act for suppressing of Lotteries*; after reciting, that for divers Years before making the said Act, several evil-disposed Persons had set up many unlawful Games called Lotteries, not only in the City of London and Westminster, and in the Suburbs thereof, but in most of the ancient Towns and Places in England and the Dominion of Wales; and had thereby most unjustly and fraudulently gotten to themselves great Sums of Money from the Children and Servants of several Gentlemen, Traders, and Merchants,

Merchants, and from other unwary Persons, to the utter Ruin and Impoverishment of many Families ; it is declared and enacted, that all such Lotteries, and all other Lotteries, are common and publick Nuisances : And whereas in order to suppress all such Lotteries, it is in and by the said Statute enacted and declared, that from and after the twenty-ninth Day of *December*, which shall be in the Year of our Lord one thousand six hundred and ninety-nine, no Person or Persons whatsoever shall publickly or privately exercise, keep open, shew, or expose to be played at, drawn, or thrown at, or shall draw, play, or throw at any such Lottery, or other Lotteries, either by Dice, Lots, Cards, Balls, or any other Number or Figures, or any other Way whatsoever, under such Penalties as in the said Act are mentioned and set forth ; which said Statute is enforced by an Act of Parliament made in the ninth Year of the Reign of her late Ma- 9 Anne. jesty Queen *Anne*, intituled, *An Act for reviving, continuing, and appropriating certain Duties upon several Commodities to be exported, and certain Duties upon Coals to be Water-born, and carried Coast-wise ; and for granting further Duties upon Candles for thirty-two Years, to raise Fifteen hundred thousand Pounds by way of*

8 Geo. I.  
a Lottery, for the Service of the Year one thousand seven hundred and eleven; and for suppressing such unlawful Lotteries, and such Insurance-Offices as are therein mentioned: And whereas in and by one other Act of Parliament made and passed in the eighth Year of the Reign of his late Majesty King George the First, intituled, *An Act for continuing the Duties on Malt, Mum, Cyder, and Perry, to raise Money by way of a Lottery, for the Service of the Year one thousand seven hundred and twenty-two; and for transferring the Deficiencies of a late Malt Act to the Land-tax for the said Year; and for giving Time for inserting the Money given with Apprentices in their Indentures; and touching lost Bills, Tickets, or Orders; and for exchanging the Tickets in the Exchequer for Certificates; and for suppressing Lotteries, denominated Sales, and other private Lotteries; and for enlarging the Time for the Accountant General of the Bank of England, to return Duplicates of Annuities into the Exchequer;* it is enacted, that all and every Person or Persons, who after the twenty-first Day of December in the Year of our Lord one thousand seven hundred and twenty-one, shall erect, set up, continue, or keep, or shall cause or procure to be erected, set up, continued, or kept, any Office or Place, under the Denomination of

Sales of Houses, Lands, Advowsons, Presentations to Livings, Plate, Jewels, Ships, Goods, or other Things, for the Improvement of small Sums of Money, or shall sell, or expose to Sale any Houses, Lands, Advowsons, Presentations to Livings, Plate, Jewels, Ships, Goods, or other Things, by way of Lottery, or by Lots, Tickets, Numbers, or Figures; or shall make, print, advertise or publish, or cause to be made, printed, advertised or published, Proposals or Schemes for advancing small Sums of Money by several Persons, amounting in the whole to large Sums, to be divided among them by the Chances of the Prizes in some publick Lottery or Lotteries established or allowed by Act of Parliament; or shall deliver out, or cause or procure to be delivered out, Tickets to the Persons advancing such Sums, to entitle them to a Share of the Money so advanced, according to such Proposals or Schemes; or shall make, print, or publish, or cause to be made, printed, or published any Proposal or Scheme of the like Kind or Nature, under any Denomination, Name, or Title whatsoever, and shall be thereof convicted, upon the Oath or Oaths of one or more credible Witnesses, by two or more Justices of

D the

the Peace of the County, Division, or Liberty where such Offence shall be committed, or the Offender shall be found, which Oath such Justices of the Peace are hereby empowered and required to administer; the Person so convicted shall, for every such Offence, over and above any former Penalties inflicted by any former Act or Acts of Parliament made against any private or unlawful Lotteries, forfeit the Sum of Five hundred Pounds, one third Part thereof to his Majesty, his Heirs, and Successors, and one other third Part thereof to the Informer, and the remaining third Part thereof to the Poor of the Parish where such Offence shall be committed; the same to be levied by Distress and Sale of the Offender's Goods, by Warrant under the Hands and Seals of such Justices, before whom such Offender shall be convicted as aforesaid; and shall also for every such Offence, by such Justices be committed to the County Gaol, there to remain without Bail or Mainprize for the Space of one whole Year, and from thence till the Sum of Five hundred Pounds so forfeited as aforesaid, shall be fully paid and satisfied: Provided nevertheless, that any Person who shall think himself or herself

herself aggrieved by the Judgment or Determination of two or more such Justices in any the Cases aforesaid, shall have Liberry to appeal to the next Quarter-sessions to be held for the County, City, or Place where such Judgment or Determination shall be made or given; and that the Judgment to be given by the Justices of the said next Quarter-sessions shall be final: And whereas it is found by Experience, that the said good and wholesome Laws have not effectually answered the good Ends, Intents, and Purposes in and by the said Acts designed; but that contrary to the true Intent and Meaning of the said recited Acts, several deceitful Games and Subscriptions are daily carried on under the Denomination of Sales of Houses, Lands, Plate, Jewels, Goods, and other Things; and that several Printers have printed, published, or caused to be printed and published Proposals or Schemes for the Sale of such Houses, Lands, Plate, Jewels, Goods and other Things, to be determined by Raffles, by Mathematical Machines or Engines, and by other indirect Ways and Means, tending to evade the said good and wholesome Laws before mentioned: And whereas several Persons have, for many Years past, carried on and set up certain fraudulent Games and

Lotteries, to be determined by the Chance of Cards and Dice, under the Denomination of the Games of the Ace of Hearts, Pharaoh, Basset, and Hazard, and thereby defrauded several of his Majesty's Subjects, ignorant of the great Disadvantage Adventurers in the said Games and Lotteries, so denominated the Games of the Ace of Hearts, Pharaoh, Basset, or Hazard, are under, subject, and liable to: And whereas several Doubts have arisen, whether the said Games of the Ace of Hearts, Pharaoh, Basset, and Hazard, are within the Descriptions of the Lotteries prohibited by the said recited Acts of Parliament: And whereas great Difficulties have arisen upon the Methods of Conviction of the Offenders against the said Acts of Parliament; for Remedy whereof, and for explaining and making more effectual the said Acts of Parliament, May it please your most excellent Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons shall, after the twenty-fourth Day of June one thousand seven hundred

200 l. Pe-  
nalty on any  
Trespass  
against this  
Act.

hundred and thirty-nine, erect, set up, continue, or keep any Office or Place, under the Denomination of a Sale or Sales of Houses, Land, Advowsons, Presentations to Livings, Plate, Jewels, Ships, Goods, or other Things, by way of Lottery, or by Lots, Tickets, Numbers, or Figures, Cards or Dice ; or shall make, print, advertise or publish or cause to be made, printed, advertised or published Proposals or Schemes for advancing small Sums of Money by several Persons, amounting in the whole to large Sums, to be divided among them by Chances of the Prizes in some publick Lottery or Lotteries established or allowed by Act of Parliament, or shall deliver out, or cause or procure to be delivered out Tickets, to the Persons advancing such Sums, to intitle them to a Share of the Money so advanced, according to such Proposals or Schemes ; or shall expose to Sale any Houses, Lands, Advowsons, Presentations to Livings, Plate, Jewels, Ships or other Goods, by any Game, Method or Device whatsoever, depending upon, or to be determined by any Lot or Drawing, whether it be out of a Box or Wheel, or by Cards or Dice, or by any Machine, Engine or Device of Chance of any kind whatsoever ; such Person or Persons

*the same  
how to be  
levied and  
applied.*

sons, and every or either of them, shall, upon being convicted thereof before any one Justice of the Peace for any County, Riding or Division, or before the Mayor, or other Justice or Justices of the Peace for any City or Town corporate, upon the Oath or Oaths of one or more credible Witnesses or Witnesses (which said Oaths the said Justices of the Peace, and Mayor, are hereby authorized, empowered, and required to administer) or upon the View of such Justice or Justices, or the Mayor, Justice or Justices for any City or Town corporate, or on the Confession of the Party or Parties accused; shall forfeit and lose the Sum of Two hundred Pounds, to be levied by Distress and Sale of the Offenders Goods, by Warrant under the Hands and Seals of one or more Justice or Justices of the Peace of such County, Riding, Division, City or Town where the Offence shall be committed; which said Forfeitures, when recovered after deducting the reasonable Charges of such Prosecution, shall go and be applied, one third thereof to the Informer and the remaining two thirds to the Use of the Poor of the Parish where such Offence shall be committed; excepting the said two thirds of such Forfeitures which shall be incurred by, and recovered upon any

any Person or Persons within the City of Bath, which said two thirds shall go and be applied to and for the Use and Benefit of the Poor residing within the Hospital or Infirmary lately erected for the Benefit of poor Persons resorting to the said City for the Benefit of the mineral Waters, after deducting the Charges of Conviction, as aforesaid.

And it is hereby enacted and declared, that the said Games of the Ace of Hearts, Pharaoh, Basset, and Hazard, are, and are hereby declared to be Games or Lotteries by Cards or Dice, within the Intent and Meaning of the said in part recited Acts; and that all and every Person or Persons, who shall set up, maintain, or keep the said Games of the Ace of Hearts, Pharaoh, Basset, and Hazard, shall be subject and liable to all and every the Penalties and Forfeitures in and by this Act inflicted upon any Person or Persons, who shall erect, set up, continue, or keep any of the said Games or Lotteries in this present Act mentioned; and shall be prosecuted and convicted, and the Penalties and Forfeitures shall be sued for and recovered, in like Manner as the said Penalties and Forfeitures are by this Act directed to be sued for and recovered.

Games spe-  
cified to be  
within the  
Intent of the  
Act.

And

501. Pe-  
nalty on the  
Adventu-  
ters.

And be it further enacted by the Authority aforesaid, that all and every Person and Persons, who shall be Adventurers in any of the said Games, Lottery or Lotteries, Sale or Sales; or shall play, set at, stake, or punt at either of the said Games of the Ace of Hearts, Pharaoh, Basset, and Hazard, and shall be thereof convicted in such Manner and Form, as in and by this Act is prescribed; every such Person or Persons shall forfeit and lose the Sum of fifty Pounds, to be sued for and recovered, as aforesaid.

Sales by  
Lotteries  
void.

and the  
Lands, &c.  
forfeited.

And it is hereby further enacted by the Authority aforesaid, That all and every such Sale or Sales of Houses, Lands, Advowsons, Presentation to Livings, Plate, Jewels, Ships, Goods or other Things, by any Game, Lottery or Lotteries, Machine, Engine or other Device whatsoever, depending upon, or to be determined by Chance or Lot, shall and are hereby declared to be void, to all Intents and Purposes whatsoever: And all such Houses, Lands, Advowsons, Presentations to Livings, Plate, Jewels, Ships, Goods or other Things, set up and exposed to Sale, in Manner and Form aforesaid, shall be forfeited to such Person or Persons who shall sue for the same, by Action, Bill,

Plaint,

Plaint, or Information, in any of his Majesty's Courts of Record, or at the Assizes for any County where the Offence shall be committed; in which Action, Bill, Plaintiff or Information, no Essoign, Protection, Wager of Law, or more than one Imparlane shall be allowed.

Provided always, and it is hereby declared an enacted, that if any Person or Persons shall think him, her or themselves aggrieved by the Judgment or Determination of any Justice or Justices of the Peace, or Mayor, as aforesaid, upon any Conviction of or for any of the Offences in this Act; such Person or Persons may appeal from the said Judgment of the said Justice or Justices, or Mayor, to the next General Quarter-Sessions of the Peace, for the said County, Riding, Division, City or Place where such Person or Persons was or were convicted; but the Person or Persons so appealing shall, and he, she and they are hereby directed to give reasonable Notice to the Prosecutor or Prosecutors of such Person or Persons as shall so appeal, of such his, her or their Intention of bringing and prosecuting such Appeal, and shall enter into a Recognizance before some Justices of the Peace for the County, Riding,

Persons aggrieved to appeal to the Quarter-Sessions.

ding, Division, City, or Place wherein the Conviction or Judgment was made or given, with two sufficient Sureties, on Condition to try such Appeal at the next Quarter-Sessions, which shall be held in and for the County, Riding, Division, City or Place wherein such Conviction or Judgment was made or given, next and immediately after the bringing such Appeal; and every such Appeal and Appeals shall by the Court at the said next General Quarter-Sessions, to which such Appeal and Appeals is or are made, be then examined, and the Matter then finally heard and determined, and not afterwards; and in case such Judgment, Determination or Conviction, as aforesaid, shall be then and there affirmed, the Party appealing shall pay unto the Prosecutor or Prosecutors his, her or their treble Costs; and such Prosecutor and Prosecutors shall have such Remedy for the same, as any Defendant or Defendants hath or have for Costs of Suit in any other Cases by Law.

*Appellant to  
pay treble  
Costs, if  
Judgment  
be affirmed.*

*Convictions  
not vacated  
for want of  
Form, &c.*

Provided always, and be it further enacted by the Authority aforesaid, That no such Conviction made, or Judgment given, as aforesaid, by this Act, shall be set aside by the said Court of Quarter-Sessions for want of Form, in case the Facts alledged in the said Conviction

shall

shall be proved to the Satisfaction of the said Court ; nor shall such Conviction or Judgment be removed or removable by Certiorari, or any other Writ or Process whatsoever, into any of his Majesty's Courts of Record at *Westminster*, until such Order or other Proceedings shall have been first removed to, and Judgment and Determination given and made hereupon by such Court of Quarter-Sessions, as aforesaid.

Provided also, and be it further enacted by the Authority aforesaid, That no Writ of *Certiorari*, or other Process shall issue or be issuable to remove the Record of any such Conviction from the said Court of Quarter-Sessions, or to remove any Order or other Proceedings taken or made by the said Court of Quarter-Sessions upon, touching, or concerning such Conviction, into any of his Majesty's Courts of Record at *Westminster*, until the Party or Parties against whom such Conviction shall be made, before the Allowance of such Writ of *Certiorari* or other Process, shall find two sufficient Sureties to become bound to the Prosecutor in the Sum of One hundred Pounds, with Condition to prosecute the same with Effect within six calendar Months, and to pay unto the Prosecutor or Prosecutors his, her or their

nor the Record thereof  
removeable,  
but upon  
100 l. Secu-  
rity.

their treble Costs and Charges, in case such Order or Conviction shall be affirmed.

**Offenders  
not able to  
pay the Pe-  
nalties, to be  
imprisoned.**

And it is hereby further enacted and declared, That if any Person or Persons, who shall be convicted of erecting, setting up, maintaining, or keeping any of the said Lotteries, or the said Games of the Ace of Hearts, Pharaoh, Basset, or Hazard ; or therein, or in either of them shall adventure, and shall not have sufficient Goods and Chattles, whereon to levy the Penalties inflicted by this Act, or shall not immediately pay the said Penalties, or give Security for the same ; it shall and may be lawful for the said Justice or Justices, before whom such Person shall be convicted as aforesaid, to commit such Person or Persons to the common Gaol of the County, Riding, Division, City, or Place where such Offence shall be committed, there to continue and remain for any Time not exceeding six Months.

**Penalty on  
Neglect of  
Justices, or  
Mayors.**

And be it also enacted, that if any Justice of the Peace, or any other Justice herein before described, or Mayor of any Corporation, shall neglect or refuse to do what is required of him and them by this Act ; such Justices and Mayors so neglecting or refusing, shall respectively forfeit and pay the Sum of

Ten Pounds for each Offence; one Moiety whereof to be paid to any Person or Persons who shall sue for the same, and the other Moiety thereof to the Poor of the Parish or Place where such Offence shall be committed; and shall be recovered, with full Costs of Suit, by Action, Bill, Plaintiff or Information in any of his Majesty's Courts of Record, or at the Assize for any County; in which Action, Bill, Plaintiff or Information, no Essoign, Protection or Wager of Law, nor more than one Impariment shall be allowed; such Prosecution being commenced within six Months next after such Refusal of such Justices or Mayor.

Provided always, and it is hereby enacted and declared, That nothing in this Act, or in any former Acts against Gaming contained, shall extend to prevent or hinder any Person or Persons from Gaming or Playing at any of the Games in this or in any of the said former Acts mentioned, within any of his Majesty's Royal Palaces where his Majesty, his Heirs or Successors shall then reside.

Provided always, and it is hereby further enacted and declared, That nothing herein contained shall extend, or be any Ways construed, deemed or taken to extend, or in any Sort to affect or pre-

This Act  
not to hin-  
der any  
Games in  
Palaces  
where the  
King re-  
fides;

nor to affect  
the Right to  
any Lands,  
&c. held by  
Lot.

judice any Estate or Interest in, out of or to any Manors, Honours, Royalties, Lands, Tenements, Advowsons, Presentations, Rents, Services and Hereditaments whatsoever, which shall or may at any Time or Times hereafter be, according to the Laws now in being, legally allotted to, or held by, or by Means of any Allotment or Partition by Lots ; but that all Persons who now are, or that shall hereafter become really and truly seized as Part-owners, Joint-tenants and Tenants in Common of any Manors, Honours, Royalties, Lands, Tenements, Advowsons, Presentations, Rents, Services and Hereditaments, shall, and he, she and they, and his, her and their Heirs and Assigns is and are hereby made and continued capable to accept and take such Estates and Interest, and Parts therein, in such and the like Manner, and to such and the like Uses, as he, she or they might, would or could have done by, or by virtue, or in consequence of any Lot, Scroll, Chance or Allotment whatsoever, had this present Act never been made ; any Thing herein contained to the contrary thereof notwithstanding.

**Limitation  
of Actions.**

And be it further enacted by the Authority aforesaid, That if any Suit or Action shall be commenced or prosecuted

against any Person or Persons for any Thing done in pursuance of this Act, every such Suit or Action shall be commenced within three Kalendar Months next after the Fact was committed, and not afterwards; and shall be laid or brought in the County, City or Place where the Cause of Action shall arise, and not elsewhere; and the Defendant and Defendants therein shall and may plead the General Issue, and give this Act and the special Matter in Evidence, at the Trial to be had thereupon, and that the same was done in pursuance of, or by the Authority of this Act; and if the Plaintiff or Plaintiffs shall become nonsuited, or discontinue his, her or their Action or Actions, Suit or Suits; or if, upon Demurrer, Judgment shall be given against the Plaintiff or Plaintiffs, the Defendant or Defendants shall and may recover Treble Costs, and have the like Remedy for the same, as any Defendant or Defendants hath or have for Costs in any other Cases by Law.

General  
Issue.

Treble  
Costs.

13 Geo. 2. cap. 19.

*An Act to restrain and prevent the excessive Increase of Horse Races, and for amending an Act made in the last Session of Parliament, intituled, An Act for the more effectual preventing of excessive and deceitful Gaming.*

**Preamble.**

WHEREAS the great Number of Horse Races for small Plates, Prizes, or Sums of Money, have contributed very much to the Encouragement of Idleness, to the Impoverishment of many of the meaner Sort of the Subjects of this Kingdom, and the Breed of strong and useful Horses hath been much prejudiced thereby; for Remedy thereof, may it please your most Excellent Majesty, that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of June one thousand seven hundred and forty, no Person or Persons whatsoever shall enter, start, or run any Horse, Mare, or Gelding for any Plate, Prize, Sum of Money,

Horses to be  
entered by  
the Owners,

or

or other Thing, unless such Horse, Mare or Gelding shall be truly and *bona fide* the Property of, and belonging to such Person so entering, starting or running the same Horse, Mare or Gelding ; nor shall any one Person enter and start more than one Horse, Mare, or Gelding, for one and the same Plate, Prize, or Sum of Money, or other Thing ; and in case any Person or Persons shall, after the said twenty-fourth Day of June one thousand seven hundred and forty, enter, start or run any Horse, Mare or Gelding, not being the Property truly and *bona fide* of such Person so entering, starting or running the same, for any Plate, Prize, Sum of Money, or other Thing, the said Horse, Mare or Gelding, or the Value thereof, shall be forfeited, to be sued for and recovered, and disposed of in Manner as is herein after mentioned ; and in case any Person or Persons shall enter and start more than one Horse, Mare or Gelding for one and the same Plate, Prize, or Sum of Money, or other Thing, every such Horse, Mare or Gelding (other than the first entered Horse, Mare or Gelding) or the Value thereof shall be forfeited, to be sued for and recovered, and disposed of in Manner as herein after is mentioned.

*and no more  
than one at  
a Time.*

*Acts against Gaming, &c.*

No Plate to  
be run for  
under 50 l.  
value,

And be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of June one thousand seven hundred and forty, no Plate, Prize, Sum of Money, or other Thing, shall be run for by any Horse, Mare or Gelding, or advertised, published, or proclaimed to be run for by any Horse, Mare or Gelding, unless such Plate, Prize, or Sum of Money, shall be of the full, real and intrinsick Value of fifty Pounds or upwards; and in case any Person or Persons shall, from and after the twenty-fourth Day of June one thousand seven hundred and forty, enter, start or run any Horse, Mare or Gelding for any Plate, Prize, Sum of Money, or other Thing of less Value than fifty Pounds, or shall make, print, advertise, publish or proclaim any Advertisement or Notice of any Plate, Prize, Sum of Money, or other Thing of less Value than fifty Pounds, as aforesaid, to be run for by any Horse, Mare or Gelding; every such Person or Persons so entering, starting or running such Horse, Mare or Gelding for such Plate, Prize, Sum of Money, or other Thing of less Value than fifty Pounds as aforesaid, shall forfeit and lose the Sum of two hundred Pounds, to be sued for, recovered, and disposed of, in such Manner

on Penalty  
of 200 l.

ner as is herein after prescribed and directed; and every Person or Persons who shall make, print, publish, advertise or proclaim any Advertisement or Notice of any Plate, Prize, Sum of Money, or other Thing of less Value than fifty Pounds aforesaid, to be run for by any Horse, Mare or Gelding, shall forfeit and lose the Sum of one hundred Pounds.

100.  
Geo. 2 c. 3  
p. 54 -

And be it further enacted by the Authority aforesaid, That from and after the twenty-fourth Day of June one thousand seven hundred and forty, no Horse, Mare or Gelding, being of the Age of five Years, shall be entered, started or run for any Plate, Prize, Sum of Money, or other Thing whatsoever, unless such Horse, Mare or Gelding shall carry ten Stone Weight, computing fourteen Pounds to each Stone Weight; and that no Horse, Mare or Gelding, being of the Age of six Years, shall be entered, started or run for any Plate, Prize, Sum of Money, or other Thing whatsoever, unless such Horse, Mare or Gelding shall carry eleven Stone Weight, computing fourteen Pounds to each Stone Weight; and that no Horse, Mare, or Gelding, being of the Age of seven Years, shall be entered, started or run for any Plate, Prize, Sum of Money,

Five Years  
old Horses  
to carry 10  
Stone 5

Six Years  
old 11  
Stone.

Seven Years  
old 12  
Stone.

*Acts against Gaming, &c.*

ney, or other Thing whatsoever, unless such Horse, Mare, or Gelding shall carry twelve Stone Weight, computing fourteen Pounds to each Stone Weight; and in case any Person or Persons shall enter, start or run any Horse, Mare or Gelding, of either of the Ages aforesaid, for any Plate, Prize, Sum of Money, or other Thing, carrying less than the Weights herein before directed to be carried, such Horse, Mare or Gelding, or the Value thereof, shall be forfeited, and the Person or Persons so entering, starting or running such Horse, Mare or Gelding, shall forfeit and lose the Sum of two hundred Pounds.

*Horse carrying less Weight to be forfeited,*  
*and Person entering, forfeits 200l.*

Provided also, That every Race that shall be hereafter run for any Plate, Prize, or Sum of Money, be begun and ended in the same Day.

*Race to be begun and ended in one Day.*  
*Matches to be at Newmarket and Black Hambleton only,*

And be it further enacted by the Authority aforesaid, That from and after the twenty-fourth Day of June one thousand seven hundred and forty, no Person or Person whatsoever shall start or run any Match with or between any Horse, Mare or Gelding, for any Sum of Money, Plate, Prize, or other Thing whatsoever, unless such Match shall be started or run at *Newmarket Heath* in the Counties of *Cambridge* and *Suffolk*, or *Black Hambleton* in the County of *York*.

or the said Sum of Money, Plate, Prize, and for not less than 50 l.  
or other Thing be of the real and intrin-  
sick Value of fifty Pounds, or upwards :  
And in case any Person or Persons shall  
start or run any such Match at any other  
Place than *Newmarket Heath* or *Black  
Hambleton* aforesaid, or for any Plate,  
Prize, Sum of Money, or other Thing  
of less Value than fifty Pounds, every <sup>on Penalty</sup> of 200 l.  
such Person or Persons shall forfeit and lose the Sum of two hundred Pounds.

And be it further enacted by the Authority aforesaid, That all Penalties and Forfeitures incurred by any Person or Persons for any Offence against this Act, shall be sued for and recovered by any Action, Bill, Plaintiff or Information in any of his Majesty's Courts of Record at *Westminster*, or at the Assizes, and shall be disposed of, one Moiety thereof to the Use of such Person or Persons as shall so sue for the same, and the other Moiety to the Use of the Poor of such Parish or Place where the Offence shall be committed, except such one Moiety of such Penalties and Forfeitures as shall be incurred by, and recovered of any Person or Persons within the County of *Somerset*; which said one Moiety shall go and be applied to and for the Use and Benefit of the poor Persons admitted into the Hospital or Infirmary lately erected but in *Somersetshire*, one half shall be given to the Hospital at *Bath*.

*Acts against Gaming, &c.*

ed in the City of Bath, for the Benefit of poor Persons resorting to the said City for the Benefit of the Mineral Waters there.

**Entrance  
Money to be  
paid to the  
second best  
Horse.**

And be it further enacted by the Authority aforesaid, That from and after the twenty-fourth Day of June one thousand seven hundred and forty, all and every Sum or Sums of Money to be paid for entering of any Horse, Mare or Gelding to start or run for any Plate, Prize, Sum of Money, or other Thing, shall go and be paid to the Second best Horse, Mare or Gelding, which shall start or run for such Plate, Prize or Sum of Money, as aforesaid.

**Gifts left for  
annual  
Races, not  
to be alter-  
ed.**

Provided always, That nothing herein contained shall extend, or be construed to extend to prevent the starting or running any Horse, Mare or Gelding for any Plate, Prize, or other Thing or Things now issuing out of or paid for or by the Rents, Issues, and Profits of any Lands, Tenements or Hereditaments, or of or by the Interest of any Sum or Sums of Money now chargeable with the same, or appropriated for that Purpose.

And whereas a good and wholesome Law was made in the twelfth Year of the Reign of his present Majesty King George the Second, intituled, *An Act* for

for the more effectual preventing of excessive and deceitful Gaming; but contrary to the true Intent and Meaning thereof, some fraudulent and deceitful Games have been invented, and a certain Game called *Passage* is now daily practised and carried on, to the Ruin and Impoverishment of many of his Majesty's Subjects; it is therefore hereby enacted and declared, That the said Game of Passage, and all and every other Game and Games invented, or to be invented with with one or more Die or Dice, or with any other Instrument, Engine or Device in the Nature of Dice, having one or more Figures or Numbers thereon, (Backgammon, and the other Games now played with the Backgammon Tables, only excepted) are and shall be deemed to be Games or Lotteries by Dice, within the Intent and Meaning of the said in part recited Act; and all and every Person and Persons, who shall set up, maintain, or keep any Office, Table or Place (save and except as in the said in part recited Act is provided and declared) for the said Game of Passage, or for any other such Game or Games, as aforesaid, (Backgammon, and the other Games now played with the Backgammon Tables, only excepted) shall severally forfeit, be subject and liable to all and every

Act against  
excessive  
Gaming.

Game of  
Passage, and  
other games  
with Dice  
decry'd.

*Acts against Gaming, &c.*

every the Penalties and Forfeitures in and by the said in part recited Act inflicted upon any Person or Persons who shall erect, set up, continue or keep any of the Games or Lotteries in the said in part recited Act mentioned ; and all and every Person or Persons who shall play, set at, stake or adventure at the said Game of Passage, or any other such Game, as aforesaid (Backgammon, and the other Games now played with the Backgammon Tables, only excepted) save and except as in the said in part recited Act is provided and declared, he and they respectively shall severally forfeit be subject and liable to all and every the Penalties and Forfeitures in and by the said in part recited Act inflicted upon any Person or Persons who shall play set at, stake or adventure at any of the said Games in the said in part recited Act mentioned ; and all and every such Offenders respectively shall be prosecuted and convicted, and the several Penalties and Forfeitures shall be sued for, and recovered and disposed of in like Manner and to such Uses, as the several Penalties and Forfeitures in either of such Cases are by the said in part recited Act directed to be sued for, and recovered and disposed of.

And be it further enacted by the Authority aforesaid, that in any Action, Bill, Plaintiff or Information to be brought or commenced by virtue of this Act, no Essoign, Protection, Wager of Law, or more than one Imparlane shall be allowed; and that over and above the Penalties and Forfeitures to be recovered by virtue of this Act, the Plaintiff or Informer shall recover his or her double Costs.

Double  
Costs.

18 Geo. 2. cap. 34.

*An Act to explain, amend, and make more effectual the Laws in Being, to prevent excessive and deceitful Gaming; and to restrain and prevent the excessive Increase of Horse Races.*

WHEREAS, notwithstanding the many good and wholesome Laws now in Being, for preventing excessive and deceitful Gaming, many Persons of ill Fame and Reputation, who have no visible Means of Subsistence, do keep Houses, Rooms, and other Places, for playing, and do permit Persons therein to play at Cards, Dice, and other Devices, for large Sums of Money, by means whereof divers young and unwary Persons, and others, are drawn in to lose the greatest Part, and sometimes all

Preamble.

F their

*Acts against Gaming, &c.*

their Substance ; and it frequently happens they are thereby reduced to the utmost Necessities, and betake themselves to the most wicked Courses, which end in their utter Ruin : And whereas a certain pernicious Game called *Roulet*, or *Roly-poly*, is daily practised, and the Laws now in Being have, by Experience, been found ineffectual to put a Stop to such pernicious Practices : For Remedy whereof, may it please your Majesty that it may be enacted ; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of June one thousand seven hundred and forty-five, no Person or Persons, of what Condition soever, shall keep any House, Room or Place for playing, or permit or suffer any Person or Persons whatsoever, within any such House, Room or Place, to play at the said Game of *Roulet*, otherwise *Roly-poly*, or at any other Game, with Cards or Dice, already prohibited by the Laws of this Realm ; and in case any Person or Persons whatsoever shall keep any such House, Room or Place for playing, or permit or suffer any Person or Persons, as aforesaid, to play

After June  
24, 1745,  
no Person  
shall keep a  
House or  
Place for  
playing at  
*Roly-poly*,  
or other  
Game with  
Cards or  
Dice ;

play at the same Game of Roulet, otherwise Roly-poly, or at any other Game, with Cards or Dice, already prohibited by Law, such Person or Persons so offending shall incur the Pains and Penalties, and be liable to such Prosecution, as is directed in and by an Act made in the twelfth Year of the Reign of his present Majesty, intituled, *An Act for the more effectual preventing excessive and deceitful Gaming.*

under Pe-  
nalties by  
12 Geo. 2.

And be it further enacted by the Authority aforesaid, That if any Person or Persons whatsoever shall, after the said twenty-fourth Day of June one thousand seven hundred and forty-five, play at the said Game of Roulet, otherwise Roly-poly, or at any Game or Games with Cards or Dice, already prohibited by Law, every such Person or Persons so offending shall also incur the Pains and Penalties, and be liable to such Prosecution, as is directed in and by an Act made in the twelfth Year of the Reign of his present Majesty, intituled, *An Act for the more effectual preventing excessive and deceitful Gaming.*

Persons  
playing shall  
incur the  
same Pe-  
nalties of  
12 Geo. 2.

And whereas in and by a certain Statute, made in the ninth Year of the Reign of her late Majesty Queen Anne, intituled, *An Act for the better preventing excessive and deceitful Gaming*, it is (amongst other Things) enacted, that from and af-

Act 9  
*Anno reci-  
ted;*

ter the first Day of May one thousand seven hundred and eleven, any Person or Persons whatsoever, who should at any Time or Sitting, by playing at Cards, Dice, Tables, or other Game or Games whatsoever, or by betting on the Sides or Hands of such who do play at any of the Games aforesaid, lose to any one or more Person or Persons, so playing or betting, in the whole the Sum of ten Pounds, and should pay and deliver the same, or any Part thereof, the Person or Persons so losing, or paying, or delivering the same, should be at Liberty within three Months then next, to sue for and recover the Money or Goods so lost and paid, or delivered, or any Part thereof, from the respective Winner or Winners thereof, with Costs of Suit; to be sued for, and recovered by Action of Debt, founded on the said Act, to be prosecuted in any of her then said Majesty's Courts of Record; in which Actions or Suits no Essoign, Protection, Wager of Law, Privilege of Parliament, or more than one Impariment should be allowed, with further Directions, as in the said Act are particularly set forth: And whereas, for the better Discovery of the Monies, or any Thing so won, and to be sued for as aforesaid, it is by the said Statute enacted, That all and

every

very Person or Persons, who, by virtue of the said Statute, should or might be liable to be sued for any such Sum or Sums of Money, or valuable Thing, should be obliged and compelled to answer, upon Oath, such Bill or Bills, as should be preferred against him or them, for the Discovery of the Sum or Sums of Money to be won at play as aforesaid; but no Provision is made, or Authority given to any Court of Equity to decree the same to be paid; Be it enacted by the Authority aforesaid, that from and after the said twenty-fourth Day of June one thousand seven hundred and forty-five, in case any Bill or Bills shall be brought, exhibited, and filed in any Court of Equity, against any Person or Persons, for any Sum or Sums of Money won by any Person or Persons after the said twenty-fourth Day of June one thousand seven hundred and forty-five, contrary to the true Intent and Meaning of the said Act, it shall and may be lawful for such Court, wherein such Bill shall be brought, exhibited, and filed, to proceed and decree thereupon, and enforce such Decree or Decrees, as shall be made in pursuance thereof, in the same Manner as is practised and used in other Causes, upon Bills and Answers depending in the

Court of  
Equity,  
where a  
Bill shall be  
filed for any  
Sum won  
after June  
24, 1745,  
may decree,  
and enforce  
their Decree  
as in other  
Causes.

Courts where such Bill shall be so brought and exhibited.

And for the more easy Conviction of Persons offending against this or any other former Act, for preventing excessive and deceitful Gaming ; Be it enacted by the Authority aforesaid, That it shall and may be lawful to and for such Person or Persons, who have Jurisdiction to hear and determine Informations upon the Statutes against excessive and deceitful Gaming, upon any Information exhibited before them, for any Offence committed against this Act, or against the Statute made in the twelfth Year of his present Majesty, intituled, *An Act for the more effectual preventing of excessive and deceitful Gaming* ; or against one other Act made in the thirteenth Year of the Reign of his present Majesty, intituled, *An Act to restrain and prevent the excessive Increase of Horse Races, and for amending an Act made in the last Session of Parliament*, intituled, *An Act for the more effectual preventing excessive and deceitful Gaming* ; to summon any Person or Persons, other than the Party accused, to appear before them, at a certain Day, Time, and Place, to be inserted in such Summons, and to give Evidence for the Discovery of the Truth of the Matter in the said Information contained ;

On Information for any Offence against this Act, or 12. Geo. 2. or 13. Geo. 2.

Persons may be summoned to give Evidence ;

tained; and in case of Neglect or Refusal to appear, or if upon Appearance, such Person or Persons shall refuse to give Evidence, or shall give any false Evidence, every such Person or Persons so offending shall forfeit and lose the Sum of fifty Pounds; to be levied by Distress and Sale of the Offender's Goods and Chattels, by Warrant under the Hands and Seals of such Persons issuing such Summons as aforesaid; and in case such Person or Persons not appearing or neglecting, or refusing to give such Evidence, or giving any false Evidence, shall not have sufficient Goods and Chattels, whereon to levy the said Sum of fifty Pounds, every such Person or Persons shall be, by such Person or Persons having Jurisdiction as aforesaid, committed to the common Gaol for the County, City or Place, where such Offence shall be committed, there to remain for the Space of six Months, without Bail or Mainprize.

or be com-  
mitted to  
Gaol for 6  
Months.

And be it further enacted by the Authority aforesaid, That from and after the twenty-fourth Day of June one thousand seven hundred and forty-five, no Person or Persons, other than the Parties, Plaintiff and Defendant in the Cause, shall be incapacitated from being a Witness touching any Offence committed against the Laws for preventing excess five

No Person  
incapable of  
being a Wit-  
ness, (ex-  
cept the Par-  
ties) for be-  
ing played,  
betted, &c.

five and deceitful Gaming, by reason of having played, betted or staked at any Game prohibited by this or any of the said Statutes.

*Proviso for  
Royal Pa-  
laces where  
his Majesty  
actually re-  
sides.*

Provided also, and it is hereby enacted and declared, That nothing in this Act contained shall extend to prevent or hinder any Person or Persons from playing at any Game whatsoever, within any of his Majesty's Royal Palaces, wherein his Majesty, his Heirs and Successors shall then actually reside.

*No Privi-  
lege of Par-  
liament to  
be allowed  
in Prosecu-  
tions, &c.*

And be it further enacted by the Authority aforesaid, That no Privilege of Parliament shall be allowed to any Person or Persons whatsoever, against whom any Prosecution or Proceeding shall be commenced or had, for keeping of any publick or common Gaming-house, or any House, Room or Place for playing at any Game or Games prohibited by this or any other Act now in Being, against excessive or deceitful Gaming; any Law, Usage, or Custom to the contrary in any wise notwithstanding;

*Persons lo-  
sing 10l. at  
one Time,  
or 20l. in  
24 Hours,  
may be in-  
dicted;*

And be it enacted by the Authority aforesaid, That if any Person after the Commencement of this Act shall win or lose at play, or by betting, at any one Time, the Sum or Value of ten Pounds, or within the Space of twenty-four Hours the Sum or Value of twenty Pounds,

Pounds, such Person shall be liable to be indicted for such Offence within six Months after it is committed, either before his Majesty's Justices of the King's Bench, Assise, Gaol Delivery, or Grand Sessions ; and being thereof legally convicted, shall be fined five Times the Value of the Sum so won or lost ; which Fine (after such Charges as the Court shall judge reasonable allowed to the Prosecutors and Evidence out of the same) shall go to the Poor of the Parish or Place where such Offence shall be committed.

Provided nevertheless, That if any Offenders discovering others shall be discharged, and admitted as Evidence,

Person so offending shall discover any other Person so offending, so that such Person be thereupon convicted, the Person so discovering shall be discharged and indemnified from all Penalties, by reason of any such Offence, if such Person so discovering hath not been before convicted thereof, and shall be admitted as an Evidence to prove the same.

Provided always, and it is hereby declared, That nothing in this Act contained shall extend, or be construed to extend, to repeal or invalidate an Act made in the ninth Year of the Reign of her late Majesty Queen Anne, intituled, *An Act for the better preventing excessive and deceitful Gaming.*

And

Clause of  
13 Geo. 2.  
recited,

And whereas in an Act passed in the thirteenth Year of his Majesty's Reign, intituled, *An Act to restrain and prevent the excessive Increase of Horse Races, and for amending an Act made in the last Session of Parliament*, intituled, An Act for the more effectual preventing of excessive and deceitful Gaming ; it is (among other Things) enacted, That from and after the twenty-fourth Day of June one thousand seven hundred and forty, no Horse, Mare or Gelding, being of the Age of five Years, shall be entered, started or run for any Plate, Prize, Sum of Money, or other Thing whatsoever, unless such Horse, Mare or Gelding shall carry ten Stone Weight, computing fourteen Pounds to each Stone Weight ; and that no Horse, Mare or Gelding, being of the Age of six Years, shall be entered, started or run for an Plate, Prize, Sum of Money, or other Thing whatsoever, unless such Horse, Mare or Gelding shall carry eleven Stone, computing fourteen Pounds to each Stone Weight ; and that no Horse, Mare or Gelding, being of the Age of seven Years, shall be entered, started or run for any Plate, Prize, Sum of Money, or other Thing whatsoever, unless such Horse, Mare or Gelding shall carry twelve Stone Weight, computing fourteen Pounds to each Stone Weight ;

Weight ; and in case any Person or Persons shall enter, start or run any Horse, Mare or Gelding, of either of the Ages aforesaid, for any Plate, Prize, Sum of Money, or other Thing, carrying less than the Weights herein before directed to be carried, such Horse, Mare or Gelding, or the Value thereof, shall be forfeited ; and the Person or Persons so entering, starting or running such Horse, Mare or Gelding, shall forfeit and lose the Sum of two hundred Pounds.

And whereas the thirteen Royal Plates of one hundred Guineas each, annually run for, as also the high Prices that are constantly given for Horses of Strength and Size, are sufficient to encourage Breeders to raise their Cattle to the utmost Size and Strength possible ; Be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for any Person or Persons from and after the twenty-fourth Day of June one thousand seven hundred and forty-five, to run any Match, or to start and run for any Plate, Prize, Sum of Money, or other Thing, of the real and intrinsick Value of fifty Pounds or upwards, at any Weights whatsoever, and at any Place or Places whatsoever, without incurring or being liable to the Penalty or Penalties in the said Act of the thirteenth Year of his

and repealed  
after June  
24, 1745.

Majesty's Reign, relating to Weights as afore-mentioned, and in the same Manner as might have been done if the said Act had never been made; any thing herein contained to the contrary notwithstanding.

30 Geo. 2. cap. 24. sect. 1, 2, 14, 15.

*An Act for the more effectual Punishment of Persons who shall attain, or attempt to attain, Possession of Goods or Money, by false or untrue Pretences; for preventing the unlawful Pawning of Goods; for the easy Redemption of Goods pawned; and for preventing Gaming in Publick Houses by Journeymen, Labourers, Servants, and Apprentices.*

Preamble.

WHEREAS divers evil disposed Persons, to support their profligate Way of Life, have by various subtle Stratagems, Threats and Devices, fraudulently obtained divers Sums of Money, Goods, Wares and Merchandizes, to the great Injury of industrious Families, and to the manifest Prejudice of Trade and Credit; Therefore, for the punishing all such Offenders, Be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal,

ral, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-ninth Day of September one thousand seven hundred and fifty-seven, all Persons who knowingly and designedly, by false Pretence or Pretences, shall obtain from any Person or Persons, Money, Goods, Wares, or Merchandizes, with Intent to cheat or defraud any Person or Persons of the same; or shall knowingly send or deliver any Letter or Writing, with or without a Name or Names subscribed thereto, or signed with a fictitious Name or Names, Letter or Letters, threatening to accuse any Person of any Crime punishable by Law with Death, Transportation, Pillory, or any other infamous Punishment, with a View or Intent to extort or gain Money, Goods, Wares or Merchandizes, from the Person or Persons so threatened to be accused, shall be deemed Offenders against Law and the publick Peace; and the Court before whom such Offender or Offenders shall be tried shall, in case he, she or they shall be convicted of any of the said Offences, order such Offender or Offenders to be fined and imprisoned, or to be put in the Pillory, or publickly whipped, or to be transported, as soon as conveniently may be (accord-

Persons con-  
victed of ob-  
taining Mo-  
ney or Goods  
by false Pre-  
tences,

or of send-  
ing threaten-  
ing Letters  
in order to  
extort Mo-  
ney or  
Goods,

may be pu-  
nished by  
Fine and  
Imprison-  
ment, or by  
Pillory,  
Whipping,  
or Transpor-  
tation,

ing to the Laws made for Transportation of Felons) to some of his Majesty's Colonies or Plantations in *America*, for the Term of seven Years, as the Court in which any such Offender or Offenders shall be convicted shall think fit and order.

Where a Charge is made of any of the said Offences, Justice to enquire therein upon Oath;

and upon Commitment, or, Admission to Bail, of the Offender, to bind over the Complainant to appear and prosecute;

And be it further enacted by the Authority aforesaid, That any Justice or Justices of the Peace of the County, Riding, Division, City, Liberty or Place, before whom any Person or Persons charged on Oath, by any credible Person or Persons, with having committed any of the Offences intended by this Act to be punished, shall be brought, shall examine by Oath (which Oath every such Justice or Justices is and are hereby empowered and required to administer) and such other lawful Means as to any such Justice or Justices shall seem meet, touching the Matters complained of, and deal with the Offender or Offenders according to Law; and if the Party or Parties charged as being the Offender or Offenders, shall be committed to Prison, or be admitted to Bail, to answer the Matters complained of at the next General or Quarter Sessions of the Peace, or next Sessions of *Oyer and Terminer*, which shall be held for the County, Riding, Division, City, Liberty, or Place, wherein

wherein the Offence shall be charged on Oath to have been committed, then such Justice or Justices shall bind over the Prosecutor or Prosecutors of every such Offender and Offenders to appear at the next General or Quarter Sessions of the Peace, or next Sessions of *Oyer and Terminer*, which shall be held for the County, Riding, Division, City, Liberty, or Place wherein the Offence shall be charged to have been committed, by Recognizance, in such reasonable Sum of Money, as to such Justice or Justices shall seem requisite, to prosecute such Offender or Offenders with Effect; and if any Money, Goods, Wares or Merchandizes, fraudulently obtained, shall appear to such Justice or Justices to exceed the Amount or Value of twenty Pounds, then the Recognizance to be taken in that Behalf from the Prosecutor or Prosecutors shall be in not less than double the Amount or Value the same shall appear before any such Justice or Justices to be worth.

and his Recognition  
to be in pro-  
portion to  
the Fraud.

And whereas the Occupiers of many licensed Publick Houses, and of other Houses wherein Wines and Liquors are sold, frequently suffer Gaming therein; and Journeymen, Labourers, Servants, and Apprentices, by Means of such Gaming therein, not only mis-spend

**Publicans  
permitting  
Journeymen, La-  
bourers, Ser-  
vants, or  
Apprentices,  
to game in  
their Houses.**

their Time, but are often reduced to Poverty and great Distress; Be it therefore further enacted by the Authority aforesaid, That from and after the said twenty-ninth Day of September one thousand seven hundred and fifty-seven, if any Person or Persons licensed to sell any Sorts of Liquors, or who shall sell, or suffer the same to be sold, in his, her or their House or Houses, or in any Out-houses, Grounds, or Appartments thereto belonging, shall knowingly suffer any Gaming with Cards, Dice, Draughts, Shuffle Board, Mississippi, or Billiard Tables, Skittles, Nine Pens, or with any other Implement of Gaming, in his, her, or their Houses, Out-houses, Grounds or Apartments thereto belonging, by any such Journeymen, Labourers, Servants or Apprentices; and shall be convicted of the said Offence on their own Confession, or on the Oaths of one or more credible Witness or Witnesses, before any Justice or Justices of the Peace for the County, Riding, Division, City, Liberty, or Place, wherein the Offence shall be committed, within six Days after any such Offence shall be committed; he, she or they so offending shall, for every such Offence, forfeit and pay the Sum of forty Shillings; and for every like Offence, which he, she or they

*forfeit 40 s.*

they shall afterwards be convicted of before any such Justice or Justices of the Peace, he, she or they so offending shall forfeit the Sum of ten Pounds; all which Sums of Money, so forfeited, shall be levied by Distress and Sale of the Offender's Goods and Chattels, by Warrant from the Justice or Justices before whom such Offender or Offenders shall be convicted; and which Warrant every such Justice or Justices is and are hereby required and authorized to grant; and three fourths of all Sums which be so forfeited shall, on the Recovery thereof, be paid to the Churchwardens of the Parish in which the Offence shall be committed, for the Use of the Poor of such Parish; and the other fourth Part thereof shall be paid to the Person or Persons on whose Information the Party or Parties offending shall have been convicted of the Offence.

and for  
every subse-  
quent Of-  
fence, 10l.  
to be levied  
by Distress  
and Sale.

Application  
of the For-  
feiture.

And be it further enacted by the Authority aforesaid, That from and after the said twenty-ninth Day of September one thousand seven hundred and fifty-seven, if any Journeyman, Labourer, Apprentice, or Servant, shall game in any House, Out-house, Ground or Appartments thereto belonging, wherein any Liquors shall be sold, and Complaint thereof shall be made on Oath before any Justice

On Com-  
plaint of  
Journey-  
men, La-  
bourers,  
Servants, or  
Apprentices,  
gaming in  
Publick  
Houses, Jus-  
tice to issue  
his Warrant  
for appre-  
hending  
them;

tice or Justices of the Peace for the County, Riding, Division, City, Liberty, or Place, where the Offence shall have been committed; every such Justice or Justices shall thereupon issue his or their Warrant to some Constable, Tythingman, Headborough or other Peace Officer of the Parish, Precinct or Place, wherein the Offence shall be charged to have been committed, or where the Offender shall reside, to apprehend and carry every such Offender before some Justice or Justices of the Peace acting for the County, Riding, Division, City, Liberty or Place, where the Offence shall be committed, or where the Offender shall reside; and if the Person who shall be apprehended shall be convicted of the said Offence by the Oath of one or more credible Witness or Witnesses, or on his own Confession, every such Offender shall forfeit any Sum not exceeding twenty Shillings, nor less than five Shillings, as the Justice or Justices, before whom any such Offender or Offenders shall be convicted, shall think fit and order, every Time he shall so offend and be convicted as aforesaid; and one fourth of all such Money so forfeited shall, on the Conviction of any such Offender or Offenders, be paid to the Person or Persons on whose Information the Party or Parties

who, upon  
Conviction,  
are to for-  
feit not ex-  
ceeding 20 s.  
nor less than  
5 s.

*Application  
of the For-  
feiture.*

Parties offending shall be convicted, and the other three fourths thereof shall be applied for the Use of the Poor of the Parish wherein the Offence shall have been committed, and shall be paid to the Overseers of the Poor of such Parish for that Purpose; and if the Party, who shall be convicted of the Offence last-mentioned, shall not forthwith pay down the said Sum so forfeited by him, any such Justice or Justices shall, by Warrant under his Hand or their Hands, commit every such Offender to the House of Correction, or some other Prison, of the County, Riding, Division, City, Liberty or Place in which he shall be apprehended; there to remain and be kept to hard Labour, for any Time not exceeding the Space of one Month, or until he shall pay the Sum of Money so forfeited.

Offender  
not paying  
the Forfei-  
ture, to be  
committed  
to hard La-  
bour.

29 Car. 2. cap. 3.

*An Act for Prevention of Frauds and Perjuries.*

**F**OR Prevention of many fraudulent Practices which are commonly endeavoured to be upheld by Perjury, and Subornation of Perjury, (2) Be it enacted by the King's most excellent Majesty,

Preamble.

by

by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the four and twentieth Day of June, which shall be in the Year of our Lord one thousand six hundred seventy and seven, all Leases, Estates, Interests of Freehold, or Terms of Years, or any uncertain Interest of, in or out of any Messuagues, Manors, Lands, Tenements or Hereditaments made or created by Livery and Seisin only, or by Parol, and not put in Writing, and signed by the Parties so making or creating the same, or their Agents thereunto lawfully authorised by Writing, shall have the Force and Effect of Leases or Estates at Will only, and shall not either in Law or Equity be deemed or taken to have any other or greater Force or Effect; any Consideration for making any such Parol Leases or Estates, or any former Law or Usage to the contrary notwithstanding.

Except  
Leases not  
exceeding  
three Years,  
&c.

II. Except nevertheless all Leases not exceeding the term of three Years from the making thereof, whereupon the Rent reserved to the Landlord, during such Term, shall amount unto two third Parts at the least of the full improved Value of the Thing demised.

III. And

III. And moreover, That no Leases, Estates or Interest, either of Freehold, or Terms of Years, or any uncertain Interest, not being Copyhold, or customary Interest of, in, to or out of any Messuages, Manors, Lands, Tenements or Hereditaments, shall at any Time after the said four and twentieth Day of June be assigned, granted or surrendered, unless it be by Deed or Note in Writing, signed by the Party so assigning, granting or surrendering the same, or their Agents thereunto lawfully authorized by Writing, or by Act and Operation of Law.

No Leases or  
Estates of  
Freehold or  
Copyhold  
shall be  
granted or  
surrendered  
by Word.

IV. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June no Action shall be brought whereby to charge any Executor or Administrator upon any special Promise, to answer Damages out of his own Estate, (2) or whereby to charge the Defendant upon any special Promise to answer for the Debt, Default or Miscarriages of another Person, (3) or to charge any Person upon any Agreement made upon Consideration of Marriage, (4) or upon any Contract or Sale of Lands, Tenements or Hereditaments, or any Interest in or concerning them, (5) or upon any Agreement that is not to be performed within the

Promises  
and Agree-  
ments by  
Parol.

the Space of one Year from the making thereof, (6) unless the Agreement upon which such Action shall be brought, or some *Memorandum* or *Note* thereof, shall be in Writing, and signed by the Party to be charged therewith, or some other Person thereunto by him lawfully authorized.

Devises of Lands shall be in Writing, and attested by three or four Witnesses.

V. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June all Devises and Bequests of any Lands or Tenements, devisable either by Force of the Statute of Wills, or by this Statute, or by Force of the Custom of Kent, or the Custom of any Borough, or any other particular Custom, shall be in Writing, and signed by the Party so devising the same, or by some other Person in his Presence, and by his express Directions, and shall be attested and subscribed in the Presence of the said Devisee by three or four credible Witnesses, or else they shall be utterly void and of none Effect.

How the same shall be revocable.

VI. And moreover, no Devise in Writing of Lands, Tenements or Hereditaments, or any Clause thereof, shall at any Time after the said four and twentieth Day of June be revocable, otherwise than by some other Will or Codicil in Writing, or other Writing declaring

the

the same, or by burning, cancelling, tearing or obliterating the same by the Testator himself or in his Presence, and by his Directions and Consent ; (2) but all Devises and Bequests of Lands and Tenements shall remain and continue in Force until the same be burnt, cancelled, torn or obliterated by the Testator or his Directions in Manner aforesaid, or unless the same be altered by some other Will or Codicil in Writing, or other Writing of the Devisor, signed in the Presence of three or four Witnesses, declaring the same ; any former Law or Usage to the contrary notwithstanding.

VII. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June all Declarations or Creations of Trusts or Confidences of any Lands, Tenements or Hereditaments, shall be manifested and proved by some Writing signed by the Party who is by Law enabled to declare such Trust, or by his last Will in Writing, or else they shall be utterly void and of none Effect.

All Declara-  
tions or  
Creations of  
Trusts shall  
be in Wri-  
ting.

VIII. Provided always, That where any Conveyance shall be made of any Lands or Tenements by which a Trust or Confidence shall or may arise or result by the Implication or Construction of Law, or be transferred or extinguished

Trusts aris-  
ing, trans-  
ferred or ex-  
tinguished  
by Implica-  
tion of Law,  
are except-  
ed.

by

by an Act or Operation of Law, then and in every such Case, such Trust or Confidence shall be of the like Force and Effect as the same would have been if this Statute had not been made; any thing herein before contained to the contrary notwithstanding.

**Assignments  
of Trusts  
shall be in  
Writing.**

IX. And be it further enacted, That all Grants and Assignments of any Trust or Confidence shall likewise be in Writing, signed by the Party granting or assigning the same by such last Will or Devise, or else shall likewise be utterly void and of none Effect.

**Lands, &c.  
shall be li-  
able to the  
Judgments,  
&c. of cestuy  
que Trust.**

X. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June it shall and may be lawful for every Sheriff or Officer, to whom any Writ or Precept is or shall be directed, at the Suit of any Person or Persons, of, for and upon any Judgment, Statute or Recognizance hereafter to be made or had, to do, make and deliver Execution unto the Party in that Behalf suing, of all such Lands, Tenements, Rectories, Tythes, Rents and Hereditaments, as any other Person or Persons be in any Manner of wise seised or possessed, or hereafter shall be seised or possessed in Trust for him against whom Execution is so sued, like as the Sheriff or other

Officer might or ought to have done, if the said Party against whom Execution hereafter shall be so sued had been seised of such Lands, Tenements, Rectories, Tythes, Rents or other Hereditaments of such Estate as they be seised of in Trust for him at the Time of the said Execution sued ; (2) which Lands, Tenements, Rectories, Tythes, Rents and other Hereditaments, by Force and Virtue of such Execution, shall accordingly be held and enjoyed, freed and discharged from all Incumbrances of such Person or Persons as shall be so seised or possessed in Trust for the Person against whom such Execution shall be sued ; (3) and if any *cessuy que Trust* hereafter shall die, leaving a Trust in Fee-simple to descend to his Heir, there and in every such Case such Trust shall be deemed and taken, and is hereby declared to be Assets by Descent ; and the Heir shall be liable to and chargeable with the Obligation of his Ancestors for and by reason of such Assets, as fully and amply as he might or ought to have been, if the Estate in Law had descended to him in Possession in like Manner as the Trust descended ; any Law, Custom or Usage to the contrary in any wise notwithstanding.

And held  
free from the  
Incum-  
brances of  
the Persons  
seised in  
Trust.  
Trust shall  
be Assets in  
the Hands  
of Heirs.

No Heir  
shall by rea-  
son the: of  
become  
chargeable  
of his own  
Estate.

*Estates pur  
auter vie  
shall be de-  
visable;*

*and shall be  
Assets in the  
Heir's Hand.*

XI. Provided always, That no Heir that shall become chargeable by reason of any Estate or Trust made Assets in his Hands by this Law, shall by reason of any Kind of Plea or Confession of the Action, or suffering Judgment by *Nient dedire*, or any other Matter, be chargable to pay the Condemnation out of his own Estate; (2) but Execution shall be sued of the whole Estate so made Assets in his Hands by Descent, in whose Hands soever it shall come after the Writ purchased, in the same Manner as it is to be at and by the Common Law, where the Heir at Law pleading a true Plea, Judgment is prayed against him thereupon; any Thing in this present Act contained to the contrary notwithstanding.

XII. And for the Amendment of the Law in the Particulars following, (2) Be it further enacted by the Authority aforesaid, That from henceforth any Estate *pur auter vie* shall be devisable by a Will in Writing, signed by the Party so devising the same, or by some other Person in his Presence, and by his express Directions, attested and subscribed in the Presence of the Devisor by three or more Witnesses; (3) and if no such Devise thereof be made, the same shall be chargeable in the Hands of the Heir, if it shall come to him by reason of a spe-

cial Occupancy, as Assets by Descent, as in case of Lands in Fee-simple; (4) and in case there be no special Occupant thereof, it shall go to the Executors or Administrators of the Party that had the Estate thereof by Virtue of the Grant, and shall be Assets in their Hands.

And where  
there is no  
special Oc-  
cupant shall  
go to the  
Executors.

XIII. And whereas it hath been found mischievous, that Judgments in the King's Courts at *Westminster* do many Times relate to the first Day of the Term whereof they are entered, or to the Day of the Return of the Original, or filing the Bail, and bind the Defendant's Lands from that Time, although in Truth they were acknowledged or suffered and signed in the Vacation-time after the said Term, whereby many Times Purchasers find themselves aggrieved:

The Day of  
signing any  
Judgment  
shall be en-  
tered on the  
Margent of  
the Roll.

XIV. Be it enacted by the Authority foresaid, That from and after the said four and twentieth Day of June any Judge or Officer of any of his Majesty's Courts of *Westminster*, that shall sign any judgments, shall at the signing of the same, without Fee for doing the same, set down the Day of the Month and Year of his so doing upon the Paper, book, Docket or Record which he shall sign; which Day of the Month and Year shall be also entred upon the Margent of the Roll of the Record where the said Judgment shall be entred.

And such  
Judgments  
as against  
Purchasers  
shall relate  
to such  
Time only.

Writs of  
Execution  
shall bind  
the Property  
of Goods,  
but from the  
Time of  
their Deli-  
very to the  
Officer.

XV. And be it enacted, That such Judgments as against Purchasers *bona fide* for valuable Consideration of Lands, Tenements or Hereditaments to be charged thereby, shall in Consideration of Law be Judgments only from such Time as they shall be so signed, and shall not relate to the first Day of the Term whereof they are entred, or the Day of the Return of the Original, or filing the Bail; any Law, Usage or Course of any Court to the contrary notwithstanding.

XVI. And be it further enacted by Authority aforesaid, That from and after the said four and twentieth Day of June no Writ of *fieri facias*, or other Writ of Execution, shall bind the Property of the Goods against whom such Writ of Execution is sued forth, but from the Time that such Writ shall be delivered to the Sheriff, Under-Sheriff or Coroners, to be executed: And for the better Manifestation of the said Time, the Sheriff, Under-Sheriff and Coroners, their Deputies and Agents, shall upon the Receipt of any such Writ (without Fee for doing the same) endorse upon the Back thereof the Day of the Month or Year whereon he or they received the same.

XVII. And

Contracts  
for Sales of  
Goods for  
ten Pounds  
or more.

XVII. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of June no Contract for the Sale of any Goods, Wares and Merchandizes for the Price of ten Pounds Sterling or upwards, shall be allowed to be good, except the Buyer shall accept Part of the Goods so sold, and actually receive the same, or give something in earnest to bind the Bargain, or in Part of Payment, or that some Note or *Memorandum* in Writing of the said Bargain be made and signed by the Parties to be charged by such a Contract, or their Agents thereunto lawfully authorized.

XVIII. And be it further enacted by the Authority aforesaid, That the Day of the Month and Year of the Enrolment of the Recognizances, shall be set down in the Marget of the Roll where the said Recognizances are enrolled, (2) and that from and after the said four and twentieth Day of June no Recognizance shall bind any Lands, Tenements or Hereditaments in the Hands of any Purchaser bona fide, and for valuable Consideration, but from the Time of such Enrolment; any Law, Usage or Course of any Court to the contrary in any wise notwithstanding.

The Day of  
the Enrol-  
ment of Re-  
cognizances  
shall be set  
down;  
And Lands  
in the Hands  
of Purcha-  
sers bound  
from that  
Time only.

**Nuncupative Wills.**

**XIX.** And for Prevention of fraudulent Practices in setting up nuncupative Wills, which have been the Occasion of much Perjury, (2) Be it enacted by the Authority aforesaid, That from and after the aforesaid four and twentieth Day of June no nuncupative Will shall be good, where the Estate thereby bequeathed shall exceed the Value of thirty Pounds, that is not proved by the Oaths of three Witnesses (at the least) that were present at the making thereof, (3) nor unless it be proved that the Testator at the Time of pronouncing the same, did bid the Persons present, or some of them, bear Witness, that such was his Will, or to that Effect; (4) nor unless such nuncupative Will were made in the Time of the last Sickness of the Deceased, and in the House of his or their Habitation or Dwelling, or where he or she hath been resident for the Space of ten Days or more, next before the making of such Will, except where such Person was surprized or taken sick, being from his own Home, and died before he returned to the Place of his or her Dwelling.

**XX.** And be it further enacted, That after six Months passed after the speaking of the pretended testamentary Words, no Testimony shall be received to prove any Will nuncupative, except the said Testimony,

mony, or the Substance thereof, were committed to Writing within six Days after the making of the said Will.

XXI. And be it further enacted, That no Letters Testamentary, or Probate of any nuncupative Will, shall pass the Seal of any Court till fourteen Days at the least after the Decease of the Testator be fully expired; (2) nor shall any nuncupative Will be at any Time received to be proved, unless Proceses have first issued to call in the Widow, or next of Kindred to the Deceased, to the End they may contest the same if they please.

XXII. And be it further enacted, That no Will in Writing concerning any Goods or Chattels or personal Estate shall be repealed, nor shall any Clause, Devise, or Bequest therein be altered or changed by any Words, or Will by Word of Mouth only, except the same be in the Life of the Testator committed to Writing, and after the Writing thereof read unto the Testator, and allowed by him, and proved to be so done by three Witnesses at the least.

XXIII. Provided always, That notwithstanding this Act, any Soldier being in actual military Service, or any Mariner or Seaman being at Sea, may dispose of his Moveables, Wages and personal Estate,

as he or they might have done before the making of this Act.

The Jurisdiction of Courts saved.

XXIV. And it is hereby declared, That nothing in this Act shall extend to alter or change the Jurisdiction or Right of Probate of Wills concerning personal Estates, but that the Prerogative Court of the Archbishop of *Canterbury*, and other Ecclesiastical Courts, and other Courts having Right to the Probate of such Wills, shall retain the same Right and Power as they had before in every Respect; subject nevertheless to the Rules and Directions of this Act.

*ss & 23  
Car. 2. stat.  
2. cap. 10.  
(6.)*

Husbands not compellable to make Distribution of the personal Estates of their Wives.

XXV. And for the explaining one Act of this present Parliament, intituled, *An Act for the better settling of Intestates Estates,* (2) Be it declared by the Authority aforesaid, That neither the said Act, nor any Thing therein contained shall be construed to extend to the Estates of Feme Coverts that shall die Intestate, but that their Husbands may demand and have Administration of their Rights, Credits and other personal Estates, and recover and enjoy the same as they might have done before the making of the said Act.

*Observations upon the Statute 29  
Car. 2. which was made to prevent  
Frauds and Perjuries, and relates  
to Bargains in buying and selling  
Goods and Chattels.*

FIRST it is to be observed, that no Leases, Estates or Interest either of Freehold or Terms of Years, or any uncertain Interest (not being Copyhold or customary Interest) of, in, to or out of any Messuages, Manors, Lands, Tenements or Hereditaments, shall be assigned, granted or surrendered, unless it be by Deed or Note in Writing, signed by the Parties so assigning, &c. or their Agents thereunto lawfully authorized by Writing, or by Act or Operation of Law : Also that no Contract for the Sale of any Goods, Wares, Merchandizes for the Price of ten Pounds Sterling or upwards, shall be allowed to be good, except the Buyer shall accept Part of the Goods so sold, or actually receive the same ; or give something in Earnest to bind the Bargain, or in Part of Payment ; or else that some Note or Memorandum in Writing of the said Bargain to be made and signed by the Parties to be charged by such Contracts, or their

*Observations on the Statute of Frauds, &c.*

their Agents thereunto lawfully authorized ; and if so done, the Action for the Money may be brought any Time within six Years (or after six Years, if an original Writ be sued out within six Years.) Also, that no Action shall be brought upon any Agreement that is not to be performed in the Space of one Year from the making thereof ; nor whereby to charge any Executor or Administrator upon any special Promise to answer Damages out of his own Estate ; or whereby to charge the Defendant upon any special Promise to answer for the Debt, Default or Miscarriage of another Person ; or to charge any Person upon any Agreement made upon Consideration of Marraige ; or upon any Contract or Sale of Lands, Tenements or Hereditaments, or any Interest in or concerning them ; unless the Agreement upon such Actions shall be brought, or some Memorandum or Note thereof shall be in Writing, and signed by the Party to be charged therewith, or some other Person thereunto by him lawfully authorised. So that if the Agreement be for Goods, Wares or Merchandise, under the Price of ten Pounds ; yet if by that Agreement they be not to be delivered within a Year ; that Agreement seems to be void, unless put in Writing,

and

and signed by the Party to be charged thereby ; and though Earnest be given upon such an Agreement not to be performed within a Year, it seems it will not help. Also, if the Contract be for Goods, &c. above ten Pounds, and tho' Earnest be given, or part of the Goods received ; yet if the Remainder be by such Contract to be delivered after a Year, this Contract (unless put in Writing and signed) it seems will not bind for the Remainder. *Sed Quære.* And so if the Agreement or Promise be to do any Thing or Things that are not to be performed in a Year's Time from the making, it will not be binding unless such Note or Memorandum be made ; but if no such Day is set, or the Time is uncertain, as to pay so much at the Day of Death, &c. it is otherwise ; for it does not appear but that might happen within a Year. Again, if any Person promises to pay the Debt of another Person, or to answer for the Default or Miscarriage of another Person ; as if he should say, Trouble not such a Man, and I will pay you the Debt he owes you ; or Trust such a one, and if he don't pay you I will ; or if he don't do such a Thing I will make you Satisfaction ; these Promises as aforesaid without a Note or Memorandum under Hand will signify nothing, though it was

*Observations on the Statute of Frauds, &c.*

was at his Request, and though you may alledge and shew a good Consideration for it; also if the Agreement be upon some Consideration of Marraige, as I will give you so much if you will marry my Daughter or Kinswoman, &c. here the Marriage is made the Consideration, and so void without Writing. But to so say, I will give so much for such a Horse at the Day of my Marriage, this is otherwise, and good without Note; for the Horse in this Case is the Consideration of the Promise. And if it be about the Sale of Lands, Tenements or Hereditaments, or any Interest therein, it must be put in Writing under Hand, as aforesaid; as if a Man promise to sell you such a House, Piece of Land, or the like; or to make a Lease for Years or Life of any Lands or Tenements, it will not bind without Writing, &c. And lastly, not to charge any Executor or administrator upon any special Promise to answer Damages, &c. as if an Executor or Administrator says to one that is about to sue him for Money owing by the Testator, &c. forbear your Suit, and I will pay your Debt. This Promise will not bind to make him answer Damages of his own Estate, unless it be put in Writing under Hand, &c.

1. Therefore every Agreement not to be performed within a Year,

2. Every

2. Every Agreement with an Executor concerning the Testator's Estate,
3. Every Agreement to pay the Debts, &c. of another Person,
4. Every Agreement where Marriage is the chief Consideration,
5. Every Agreement concerning the Sale of Lands, &c. must be put in Writing, and signed by the Party to be charged.

So that in the Particulars above-named, it is absolutely necessary that there be some Note or Memorandum to make good such Contracts, Promises and Agreements.

Note, That by Stat. 7 Jac. I. 12. none keeping a Shop Book, his Executors or Administrators, shall be allowed to give it in Evidence for Wares or Work above one Year before the Action brought, unless they have obtained a Bond or Bill for the Debt, or brought an Action for the Money within one Year next after the Wares delivered or Work done. But this Act is not to hold place between Merchant and Merchant, Tradesman and Tradesman, or Merchant and Tradesman, for any Thing falling within the Compass of their mutual Trades and Merchandise.

*Cases and Points resolved in the Common Law Courts, and in Equity, on several Branches of this Statute.*

**O**N the Clause, *That no Action shall be brought upon a special Promise to answer for the Debt, Default, &c. of another*, it has been resolved, That if *A.* is about hiring a Horse from *B.* and *C.* to encourage him to lend the Horse, promises that *A.* should deliver him safe. This is a collateral Promise, and an Undertaking within the Statute. For *C.* subjects himself to an Action on the Breach of the original Contract by *A.* against whom Detinue lies on the Bailment. So if two come to a Shop, and one of them contracts for Goods, and the Seller does not choose to trust him, whereupon the other says, Let him have them, and I will undertake he shall pay you. But if the Promise be I will see you paid, or I will be your Paymaster, it is otherwise. So if *A.* comes to *B.* and tells him, Hire your Horse to *J. S.* and I will see you paid the Hire. There the hiring is to *A.* and not to *J. S.* who is considered as Servant to *A.* So in all Cases where the whole Credit is given to the Undertaker, or he alone

alone liable to Action. 1 Salk. 27, 28.

6 Mod. 248, 249.

So in Equity. If an Agreement be made concerning Lands, though not in Writing, and the Party by whom it was made receives all or part of the Money, Equity will compel a specific Performance of the whole Agreement, because this is out of the Statute, which designed to defeat such Agreements only, no Part whereof were carried into Execution, and are set up merely by Parol. For that was the Occasion of the Statute of Frauds and Perjuries, that Persons used to impose verbal Agreements upon others, and by such false Oaths charge the Parties in Equity to perform such Agreements though they had never been made. And therefore the mere parol Proof of such Agreements concerning Lands cannot be admitted in a Court of Equity. But where the Price is paid, there it doth not stand upon the parol Proof of the Agreement only, but upon the Execution of Part of the Agreement, which is Evidence that the Agreement was really made. And therefore there is the same Reason that the Plaintiff in Equity should have the Land for his Money; as it is that he should deliver the Goods who hath received the Money; but the Doubt in these Cases

is, what shall be a Proof of the Receipt of the Money. Thus far it seems certain, that if the Defendant in his Answer confesses the Receipt of the Money, or if he denies the Payment, and it is proved by Writing, by Letter or other written Evidence, he shall be obliged specially to perform the whole Agreement, because he hath carried part into Execution. But if the Defendant confesses the Receipt of the Money, but says he borrowed it from Plaintiff, and that he had it not in Execution of that Agreement; there he turns the Proof of the Agreement upon the Plaintiff, and then the Plaintiff must prove the Receipt of the Money by the Defendant for the Purpose in the Bill, by some written Agreement.

1 Vern. 151, 159, 363. 2 Vern. 455.  
1 Vern. 210, 220, 472, 627. 1 Vern.  
240. 2 Can. Cas. 135. Further Cases  
on Frauds, *vide* 1 Vern. 366. Skin.  
159. *Preced. in Chancery* 561, 519.  
1 New Abr. 74. *Abridg. Eq.* 19, 20,  
21. 2 Vern. 373, 322.

For Law Cases, *vide* 2 Jon. 108, 158.  
1 Vent. 330. 2 Mod. 310. 2 Lev.  
227. 2 Sbow. 56. Raym. 450, 451.  
3 Lev. 65. Skin. 156. 1 Salk. 280.  
Skin. 326, 355. S. P. .

*Viner's Abridg. Title Frauds, Agree-*  
*ments, &c.*

*Cases*

*Cases on Deceits, Frauds, and on  
expressed and implied Warranties.*

THE Defendant sold Sheep, and warranted that they were sound, and should be sound for a Year next ensuing ; adjudged, that the Warranty is not impossible to be performed, no more than to warrant that such a Ship shall return safe to *London* ; so the Action will lie. *Owen* 60.

Case, &c. in which the Plaintiff declared, that in Consideration of 20*l.* paid by him to the Defendant, he promised to deliver to him four hundred Pounds of Wax on such a Day, and that at the Day he did deliver three hundred and seventy-three Pounds of bad Wax, which he warranted to be good and merchantable, by which he was damnified, &c. the Defendant pleaded an Agreement between them as well for the twenty-seven Pounds not delivered, as for the Badness of that which was delivered ; upon which Plea the Plaintiff demurred, because the Defendant had not answered the Deceit ; adjudged, that it was not material to answer it, because the Warranty that the Wax was good, was after the Contract made. *Dyer* 73.

*Affumpſit, &c.* for there being a Discourse between the Plaintiff and B. G. about certain Hogs of the Plaintiff's to be put to mast, the Defendant promised, in Consideration the Plaintiff would give B. G. 3 s. for every Hog put to mast, that they should be well fatt'd, and redelivered to the Plaintiff; and the Action was brought for fifty Hogs not redelivered; adjudged, that the Action lay, though the Defendant had no Manner of Benefit by the Promise, because it was grounded upon a Deceit. *Cro. Eliz. 200.*

The Master declared, that B. G. was his Servant, and had 65 l. of his (the Master's) Money in his Possession, and that the Defendant to deceive him procured a Letter to be written and directed to the Servant, and to be delivered to him, which he affirmed to be written by the Master, and that he the Defendant was sent with it by the Master to the Servant, who causing it to be read, and understanding that his Master had therein appointed him to pay the Money to the Defendant he paid it accordingly; when in Truth the Letter was counterfeited, and he never sent the Defendant for the Money; it was objected after a Verdict for the Master, that he ought not to bring the Action, but the Servant  
but

but adjudged the Action was well brought by the Master, for he had the Loss. 2 Cro. 233.

Case, in which the Plaintiff declared, that he had 100*l.* delivered to him to pay to *W. R.* and that the Defendant affirmed to him, that he was *W. R.* and thereupon the Plaintiff delivered the 100*l.* to him, when in Truth he was not the said *W. R.* it was objected, that the Action did not lie; but adjudged, that the Plaintiff having alledged in his Declaration that the Defendant *false & fraudulent* had affirmed himself to be *W. R.* the Action would lie upon this Deceit. Moor 538.

The Defendant having counterfeit Jewels, and knowing them to be such, sent his Servant with them to the Plaintiff to sell them, and the Plaintiff sold them for 800*l.* and the Servant received the Money, and returned home, afterwards the Cheat being discovered, the Plaintiff was imprisoned, and compelled to make Restitution to the King; adjudged, that the Action did lie against the Master. Popb. 143.

A Clothier made good Cloth to which he set his Mark, and got a great Trade: Another Clothier set the same Mark upon bad Cloth, for which the Action was

was brought, and adjudged, that it did lie. *Popb. 143. 2 Cro. 468.*

Case in nature of a Deceit, wherein the Plaintiff declaring, that he discoursing with the Defendant about the Purchase of certain Houses, the Defendant affirmed the yearly Rent to be so much, which the Plaintiff believing, he bought the Houses, when in Truth the yearly Rent was not so much; after a Verdict for the Plaintiff, it was moved in Arrest of Judgment, that this Action would not lie, because there was only a Discourse about the Houses, and no Warranty that they were of that yearly Value; 'tis true if a Man sells Goods, and affirms them to be his own when they are not, an Action will lie, because the Buyer cannot tell who hath any Property in them; and so it will in the principal Case, because the Rent is a certain Thing, and the same to every Body. But to affirm a Jewel or Land is worth so much when 'tis not, an Action will not lie, because that may be of greater Value to one than another. *Sid. 146.*

Case, &c. for a Deceit, in which the Plaintiff declared he bought Silk of the Defendant for such Silk, &c. whereas it was of another Kind, and that the Defendant knowing the Deceit sold it to him;

him; upon Not guilty pleaded, it appeared that there was no actual Deceit in the Defendant who was the Merchant, but that it was in his Factor beyond the Sea; but adjudged, that his Deceit shall charge the Merchant, because 'tis more reasonable that he who puts a Trust in a Deceiver should lose than a Stranger.

*i. Salk.*

*Affumpſit, &c.* to pay for a Horse a Barley Corn, a Nail, doubling it on every Nail, and the Plaintiff averred that there were thirty-two Nails in the four Shoes of his Horse, and that the Barley-corn being doubled in every Nail, it came to five hundred Quarters of Barley; on *Non affumpſit* pleaded the Chief Justice at the Trial directed the Jury to give the Value of the Horse, which was 8*l.* in Damages, and so they did. *i. Lev. 111.*

If there be a Communication between *A.* and *B.* for the buying of certain Sheep, and therein *B.* the Vendor says they are his own Sheep, when in Truth they are the Sheep of another; but thereupon *A.* buys them of *B.* though *B.* made not an express Warranty of the Sheep, yet an Action upon the Case in Nature of a Deceit lies against *B.* *i. Rot. Abr. 90.*  
*Cro. Jac. 474. S. C.*

So

*Cases on Deceits, Frauds, &c.*

So if the Vendor affirms they are the Goods of a Stranger his Friend, that he had an Authority from him to sell them to him, and thereupon *B.* buys them, when in Truth they are the Goods of another; yet if he sold them fraudulently and falsely upon this Pretence of Authority, tho' he did not warrant them, and though it is not averred that he sold them, knowing them to be the Goods of a Stranger; yet *B.* shall have an Action upon the Case for this Deceit. *i Rol. Abr. 91.*

In an Action upon the Case by *A.* against *B.* if the Plaintiff declares that the Defendant craftily intended, &c. and offering to sell a Gelding to the Plaintiff, affirming, that he brought up that Gelding from a Colt, and that the said Gelding was then his own, which the Plaintiff believing, afterwards, that is to say, upon the same Day and Year, and at the Place aforesaid, did buy the said Gelding, &c. The Action lies upon this Declaration, though there was no Warranty upon the Sale; for this was an apparent Deceit contrary to his own Knowledge, and though it is not averred that he sold him at the same time, when he affirmed he bred him up of a Colt, but that he *postea* the same Day and Place bought him, giving Credit thereunto, this shall be

be intended immediately after speaking of the Words; for all the Words could not be spoke together. 1 Rot. Abr. 91. Style 310. S. C.

So in Case, where the Plaintiff declared, that there being a *Colloquium* between him and the Defendant concerning the buying and selling of two Oxen, which the Defendant then had in his Possession, that he (the Defendant) *ad- tunc & ibidem falso & malitiose affirmabat*, that these Oxen were his, to which he giving Credit bought them for so much Money, when in Truth the said Oxen were the proper Goods of J. S. and that he the said J. S. *postea, &c.* lawfully recovered the said Oxen from the Plaintiff, &c. And it was held after Verdict, that the Action lay on the bare Affirmation without any express Warranty, and though objected, that it was not set forth that he *sciens* that the Oxen were the Oxen of J. S. nor that he did it *deceptive*. Cartb. 90. 3 Mod. 261. S. C. Comb. 142. S. C. 1 Show. 68. S. C.

So where the Plaintiff declared, that the Defendant being possessed of a certain Lottery Ticket sold it to him, affirming it to be his own, whereas in Truth it was not his; but another's; Defendant pleaded he bought it *bona fide*, and sold it: On Demurrer, Holt C. J. held,

held, where one having the Possession of any personal Chattle sells it, the bate affirming it to be his amounts to a Warranty, and an Action lies on the Affirmation, for his having Possession is a Colour of Title, and perhaps no other Title can be made out; *aliter* where the Seller is out of Possession, for there may be room to question the Seller's Title, and *caveat emptor* in such Case to have either an express Warranty or a good Title; so it is in the Case of Lands, whether the Seller be in or out of Possession, for the Seller cannot have them without a Title, and the Buyer is at his Peril to see it. *1 Salk. 210.* See *Syle* 343, 346. *Cro. Jac. 197.*

If the Plaintiff declares, that whereas Queen *Elizabeth* was seized in Fee of the Aadvowson of the Vicarage of *S.* where-to the Tithes in *S.* did belong; and that the Defendant upon the ninth of *June* did affirm himself to be the lawful Incumbent thereof, and that he had Right to the Tithes from the Death of *J. N.* and after upon the sixteenth of *June* the Plaintiff having a Communication with the Defendant about his Buying of the Defendant the said Tithes till *Michaelmas* following, the Defendant *ad tunc sciens* that he had no Right thereto, (the Defendant not having been instituted, &c.) yet false

& deceptive sold them to the Plaintiff for 30*l.* and alledges *in facto*, that J. N. was after presented, and took the Tithes, &c. The Action does not lie, for there was no Warranty that the Plaintiff should enjoy them, and this Affirmation also was in Time precedent to the Sale. *Cro. Jac. 159. Moor 467. S. C.*

So if the Plaintiff declares, that upon a Communication between the Plaintiff and the Defendant for the Purchase of a certain Term of Years, which the Defendant then had in certain Lands, the Defendant *afferuit* to the Plaintiff, that the said Term was worth 150*l.* to be sold, to which the said Plaintiff *fidem adhibens* did give the Defendant 150*l.* for the same, and after the Plaintiff offering the said Term to Sale could not get so much for the same; the Action does not lie, for there was only a naked Affirmation of the Defendant, that the Term was worth so much, and it was the Plaintiff's Folly to believe him. *Yelv. 20.*

But if on a Treaty for the Purchase of a House, the Defendant affirms the Rent to be 30*l. per Ann.* whereas in Truth it is but 20*l.* and thereby the Plaintiff is induced to give so much more than the House is worth; the Action lies, for the

Value of the Rent is matter that lies in the private Knowledge of the Landlord and Tenant, and if they affirm the Rent to be more than it is, the Purchaser is cheated, and ought to have Remedy for it. *1 Salk. 211.*

If *A.* being a Goldsmith, and having Skill in Jewels and precious Stones, hath a Stone which he affirms to be a Bezoar Stone, and sells it to *B.* for 100*l.* as a true Bezoar Stone, no Action lies against *A.* for every Man in selling his Wares will affirm that his Wares are good, or that the Horse which he sells is sound; and yet if he does not warrant them so, if false, no Action lies. *Cro. Jac. 4.*

But if a Man sells a Tun of Wine, and warrants it to be sound, and not corrupted, if it be corrupted an Action upon the Case lies. *1 New Abr. 52.*  
*11 H. 6. 18. F. N. B. 94. S. P.*

So if a Man sells a Horse, and warrants him to be sound of his Wind and Limbs, if he be not an Action upon the Case lies. *11 H. 6. 18. 1 Rol. Abr. 96. S. C.*

If a Man knowing his Horse to be lame and foundred, offers him me to buy, and warrants him to be sound, &c. relying upon which I buy him, by which I am deceived, though the Warranty was before the Sale, yet because

cause this was the Cause of the Sale,  
an Action upon the Case lies thereupon.

1 Rol. Abr. 96.

If A. sells a Horse to B. and warrants him to be sound of Wind and Limb, and clean of Legs, whereas he well knows that he is Shoulder-pitched, and has Splints upon his Legs, an Action lies against him upon this Warranty, for these Imperfections are not subject to the View of an unskilful Person. *i Rol. Abr.* 79.

The Plaintiff declared, that the Defendant sold him a Horse such a Day and Place, and then and there warranted the aforesaid Horse to be found Wind and Limb, whereupon he paid his Money, and avers the Horse had but one Eye, &c. on Plea that he did not warrant, the Plaintiff had a Verdict; and it was objected in Arrest of Judgment,  
1. That the Want of an Eye is a visible Thing, whereas the Warranty extends only to secret Infirmities; but to this it was answered and resolved by the Court, that this might be so, and must be found to be so, since the Jury have found that the Defendant did warrant.  
2. As the Warranty is here set forth, it might be at a Time after, whereas it ought to be a Part of the Contract, and therefore it is always al-

ledged warrantizando vendidit; sed non allocatur; for the Payment was afterwards, and it was that compleated the Bargain, which was imperfect without it.

*I Salk. 211.*

An Action lies against an Hostler for Goods imbeziled out of his Inn, without alledging it to be *commune Hospitium*. *Hob. 245.*

It lies against him for putting a Horse out to Grafs without the Owner's Knowledge, if the Horse is lost. *8 Co. 32.*

If the Guest does not deliver his Things to the Hostler to lay up, yet if they be lost an Action upon the Case lies against him. *Co. 33.*

If an Host refuse a Guest upon Pretence that his House is full, and it be not so, an Action lies. *1 Rol. 3.*

If the Hostler appoints one to lodge with his Guest, and he steals his Goods, the Hostler shall be answerable. *8 Co. 33.*

If a Guest brings any Deeds or Writings in Bags, or a Chest into the Inn, and they are stolen, the Innkeeper is chargeable. *8 Co. 33.*

If one leaves his Horse at an Inn to stand there by Agreement at Livery, although neither himself nor any of his Servants lodge there, he is reputed a Guest for that Purpose, and the Innkeeper

keeper hath a valuable Consideration, and if the Horse be stolen, he is chargeable with an Action upon the common Custom of the Realm. *Cro. Car. 189.*

If one comes to an Inn, and leaves his Goods and Horses, and goes into the Town, and after returns, and in the Interim the Goods are stolen, no doubt but he is a Guest, and shall have his Remedy. *Cro. Car. 189.*

A Man Servant brings his Master's Money to a common Inn, where he lodgeth it, and by Default of the Innkeeper or his Servants the Money is carried away by Strangers, the Master may sue the Innkeeper. *Yelv. 162.*  
*Latch. 126.*

It lies against one for letting the Plaintiff's Horse to hire without Leave. *I Brown 80.*

If an Hostler require of his Guest to lay his Goods in a certain Room under Lock and Key, and he will warrant them, otherwise he will not, the Guest lays them in any public Place, and they are lost, no Action lies against the Hostler, because the Fault is in the Guest.  
*8 Co. 33.*

If a Man come to a common Inn, and deliver his Horse to the Hostler, and bid him put him to Grass, if the Horse be lost,

lost, the Innholder is not answerable for him. 8 Co. 32.

If a Person that is not travelling, as a Neighbour or a Friend, lodge in an Inn, and his Goods are stolen, no Action lies against him. 8 Co. 326.

If the Servant of a Guest, or one that comes with him, or one that he desires may lodge with him, steal the Goods, the Hostler is not chargeable. 8 Co. 33.

If a Guest be beat in an Inn, the Hostler shall not be answerable for that, for the Injury must be done to his Goods. 8 Co. 33.

If a Man leaves Goods to keep, whereof the Defendant is to have no Benefit, and goeth from thence for two or three Days, though he says he will return, yet he is at his Liberty, and is not any Guest during that Time; nor is the Innkeeper chargeable as a common Hostler for the Goods stolen during that Time, unless he makes a secret Promise for the safe keeping of them.

An Action will not lie against the Host, where the Guest shall come in without the Consent of the Host.

Where one having the Possession of any personal Chattle sells it, the bare affirming it to be his amounts to a Warranty,

Warranty, and an Action lies in the Affirmation; *alio* where the Seller is out of Possession, for there may be room to question the Seller's Title, *et caveat emptor* in such Case, either to have an express Warranty, or a good Title, but such Affirmance makes no Warranty of Lands in any Case. 1 *Salk.* 210, 211.

If a Person sells certain Pipes of Wine with Warranty, and they are corrupt, an Action upon the Case lies. 2 *Cro.* 470.

Deceit lies for affirming to a Purchaser, that the Rent of the House or Land is more than in Fact it is. 1 *Salk.* 211.

Warranty of a Horse to be sound, want of an Eye is a Breach. *Idem.*

A Warranty must be at the Time of the Sale, else not good. 2 *Cro.* 196.

See *Viner's Abridg.* Title *Disceit.*

A Promise to pay a third Person's Debt only in Consideration of Forbearance, is not such a Consideration as to maintain an Action against the Promiser.

*T. W.*

### Atkinson *against* White.

Defendant by verbal Agreement was to deliver Plaintiff 1600 Quarters of Oats

Oats within a Month, no Earnest given. Defendant refused to deliver the Oats; therefore *Quære* is the Agreement void by the Statute of Frauds.

We think Mr. Atkinson may maintain an Action for the Breach of this Agreement, notwithstanding no Earnest was given, for the Statute of Frauds relates only to *immediate Sales*, where the Buyer might accept the Goods at the Time; but this was a future *executory Contract*, and by the Term of it the Oats were not then to be delivered, and consequently no Part could at that time be accepted. The giving of Earnest is only in the Place of an Acceptance, and extends to no Cases but *executed Contracts*, where the Sale is absolute at the Time, and the Buyer intitled to an immediate Delivery. But here the Oats were not meant to be delivered till a Month afterwards.

*Jan. 10,  
1763.*

*J. Y.  
T. W.*

A Promise to give a Fortune in Marriage is void unless in Writing, by the Statute of Frauds and Perjuries, because 'tis a Promise in Consideration of Marriage; but a verbal Promise to marry is not.

*June 18, 1763. Tho. Warren.*

*Cheats*

*Cheats punishable by the Common Law.*

1. **CHEATS** which are punishable by the Common Law, may in general be described to be deceitful Practices in defrauding or endeavouring to defraud another of his own Right by means of some artful Device, contrary to the plain Rules of common Honesty ; as playing with false Dice, or by causing an illiterate Person to execute a Deed to his Prejudice, by reading it over to him in Words different from those in which it was written ; or by persuading a Woman to execute Writings to another as her Trustee upon an intended Marriage, which in Truth contained no such Thing, but only a Warrant of Attorney to confess a Judgment, or by suppressing a Will, and such like. *1 Hawk. 188.*

2. It seemeth to be the better Opinion, that the deceitful Receiving of Money from one Man to another's Use, upon a false Pretence of having a Messuage and order to that Purpose, is not punishable by criminal Prosecution, because it is accompanied with no Manner of artful Contrivance, but wholly depends on a bare naked Lie ; and it is said to be needless to provide severe Laws for such Mischiefs

Mischiefs, against which common Prudence and Caution may be a sufficient Security. *1 Haw. 188.*

3. A Person for a counterfeit Pass was adjudged to the Pillory and fined. *Dalt. c. 32.*

4. On an Indictment against the Defendant, a Miller, for changing Corn delivered to him to be ground, and giving bad Corn instead of it, it was moved to quash the same, because it is only a private Cheat, and not of a public Nature; it was answered, that being a Cheat in the Way of Trade it concerned the Public, and therefore was indictable; and the Court unanimously agreed not to quash it. *T. 16 G. 2. K. and Wood, Sess. C. V. 1. 217.*

5. A Person falsely pretending he had Power to discharge Soldiers, took Money of a Soldier to discharge him; and being indicted for the same, the Court held the Indictment to be good. *T. 3 C. Serlesteau's Case, 1 Latch 202.*

6. As there are Frauds which may be relieved civilly, and not punished criminally (with the Complaints whereof the Courts of Equity do generally abound); so there are other Frauds which in a special Case may not be helped civilly, and yet shall be punished criminally: Thus if a Minor goes about the Town, and pretending

pretending to be of Age, defrauds many Persons by taking Credit for considerable Quantities of Goods, and then insisting on his Non-age ; the Persons injured cannot recover the Value of their Goods, but they may indict and punish him for a common Cheat. *Barl.* 100.

II. *By Statute.* (*See the aforesaid Stat.* 30 Geo. 2. c. 24.)

1. By the 33 H. 8. c. 1. If any Person shall falsely and deceitfully obtain or get into his Hands or Possession any Money, Goods, Chattels, Jewels or other Things of any Person, by Colour and Means of any false privy Token, or counterfeit Letter made in another Man's Name, and shall be convicted thereof by Examination of Witnesses, or Confession at the Assizes or Sessions, or by Action in any Court of Record ; he shall have such Punishment, by Imprisonment, Pillory or other corporal Pain (except Death) as the Court shall appoint. Saving to the Party grieved such Remedy by Action or otherwise, for Goods so obtained, as he might have had by the Common Law. And two Justices (one Quorum) may call and convene by Proces or otherwise (A) to the Assize or Sessions any Person suspected, and

and commit or bail him to the next Assize or Sessions.

*Get into his Hands or Possession]* A Person endeavouring by a counterfeit Letter to defraud another of Goods, and being apprehended on Suspicion of such Fraud, before he hath got the Goods into his Possession, seems not to be within this Statute. *E. 3 G. 2. K. and Brian, Sess. C. V. 2. 27.*

*False privy Token]* On Motion to quash and Indictment which was, that the Defendant came pretending that such a Person had sent him to receive 20*l.* and received it, whereas such Person did not send him: By the Court it is not indictable, unless he came with *false Tokens*; for we are not to indict one Man for making a Fool of another. *Black. 79.*

*H. 13 G. 2. K. and Munoz.* It was adjudged, that an Indictment averring the Offence to be false Tokens, without shewing what those false Tokens are, is not sufficient; and that the fraudulently procuring a Note from a Person by falsely affirming, that there was one in the next Room that would pay the Money due upon it, whereas in Fact there was no such Person in the next Room, is not a false Token, but a false Affirmation only. *Sess. C. V. 2. 201. Str. 1127.*

*Note,*

Note, The Statute says, a false privy Token.

*Corporal Pain]* Lord Coke observes hereupon, that for this Offence the Offender cannot be fined, but corporal Pain only inflicted. 3 Inst. 133.

But Mr. Hawkins observes, that there is a Precedent in Cro. Car. 564. by which it appears, that one convicted on such a Prosecution hath been adjudged not only to stand on the Pillory, but also to pay a Fine of 500*l.* and to be bound with good Sureties to his good Behaviour. 1 Haw. 188.

*Commit or bail him]* In this Case the Justices shall do well to take Examination of the Offence, and to certify the same to the Sessions or Gaol Delivery, and withal to bind over the Informer and Witnesses to give Evidence therein.

Dalt. c. 32.

### *By false Weights and Measures.*

Whoever shall sell by any other Weight, Measure or Yard not according to the Statute Standard, or keep any such, whereby any Thing is bought or sold, shall forfeit 5*s.* on Conviction before one Justice, on Oath of one Witness, to be levied by Distress, and in

L Default,

*Cheats punishable by the Common Law.*

Default, Imprisonment till paid. 16  
*Car. c. 19. s. 2.*

Defective Weights and Measures may be broken and burnt, and the Offender to forfeit 6 s. 8 d. for the first Offence, for the second 13 s. 4 d. and for the third 20 s. and be set in the Pillory.  
*11 Hen. 7. c. 4.*

Like Offenders presentable at Sessions by 22 *Car. 2. c. 8.*

Also punishable by Indictment, Fine and Imprisonment at Common Law.

**G A M I N G,**

(A) *As restrained by Common Law or Statutes.*

33 H. 8. c. 1. }  
 9. s. 11. } **N**O Person of what Degree soever shall by himself, Factor, Deputy, Servant or other Person, for his or their Gain, Lucre or Living, keep, hold, exercise or maintain any common House, Alley or Place of Bowling, Coyting, Coylsh, Caylos, half Bowl, Tennis, Dicing Table or Carding, or any other Manner of Game prohibited by any Statute heretofore made, or any unlawful new Game now

now invented or made, or any other new unlawful Game hereafter to be invented, found, had or made, on Pain of 40 s. a Day, for every Day he keeps or suffers any such Game to be played.

*Sect. 12.* And every Person resorting to such Houses, and there playing, to forfeit for every Offence 6 s. 8 d.

*Sect. 14.* A Justice of Peace may enter such Houses, and commit the Offenders, until they find Sureties not to offend again.

*Sect. 15.* Justices, &c. neglecting to search suspected Houses, to forfeit 40 s. a Month.

*Sect. 16.* And no Artificer or Handicraftsman, Husbandman, Apprentice, Labourer, Servant at Husbandry, Journeyman or Servant of Artificer, Mariner, Fisherman, Waterman or serving Man, shall play at Tables, Tennis, Dice, Cards, Bowls, Clash, Quoiting, Logating or any other unlawful Games out of *Christmas*, on Pain of 20 s. for every Offence ; and in *Christmas* to play in their Master's Houses or Presence ; and no Person shall at any Time play at Bowls in any open Place out of his Garden or Orchard, on pain of 6 s. 8 d. for every Offence ; and all Justices, Mayors, Sheriffs and Head Officers are authorized to commit every Offender, without Bail

*Gaming restrained by*

or Mainprize, until they be bound in such Sums as the said Justices, &c. shall think fit, not to use such unlawful Games. (See the Act at large)

**2 & 3 P. & M. cap. 9.** Every Licence, Playcard or Grant made for keeping of any Bowling Allies, Diceing-Houses or other unlawful Games, shall be void.

See this Act  
ante.

**16 & 17 Car. 2. cap. 7.** They that by Fraud or ill Practice in playing at Cards, Dice, Tables, Tennis, Bowls, Kittles, Shovelboard or in Cock-fightings, Horse-races, Dog-matches or Foot-races, or other Pastime or Game, or by bearing a Part in the Stakes, Wager or Adventures, or by betting on the Sides of such as play, act, ride, &c. and acquire to themselves or others Money or Things of Value, shall *ipso facto* forfeit the treble Value, one half to the King, the other to the Loser, prosecuting within six Kalendar Months, and, in Default of such Prosecution, that Moiety to them that will sue within a Year after the six Months expired.

**Sez. 3.** If any Person play at the said Games or other Pastimes (other than for ready Money) or bet on other Men's Sides, and shall lose any Sum of Money or other Things exceeding 100*l.* at one Time of Meeting, they shall not be compelled

compelled to make good the same, but such Contracts and all Securities for the same shall be void. The Person winning the same shall forfeit the treble Value of such Money or other Things won above 100*l.* one half to the King, the other to the Prosecutor, suing within a Year.—

A Ring of 20*l.* Value was lost at play, and paid; and there was lost also at the same Time 100*l.* upon Credit, and a Bond given for the 100*l.* *Windbam* and *Morton*, *J.* held that this was within the Statute. But *Keeling* and *Twisden e contra*; and afterwards *Windbam* being dead, it was adjudged by *Keeling* and *Twisden*, that the Bond was good, *Morton contradicente*. *Sid.* 394. *Hill* 20 & 21 *Car.* 2. *B. R. Danvers v. Thistlewaite*.

Winner shall not recover for Money won at Play against an Acceptor, but an Indorsee of a Bill shall. *1 Salk.* 344. *Mich.* 8 *W.* 3. *Hussey v. Jacob.* *Cartb.* 356. *S. C.* 5 *Mod.* 175. *S. C.*

9 *Ann. cap. 14. sect. 1.* (See the Act itself as given at large,) Lands incumbered for Money won at Play, shall pass to the Heir of him in Reversion; and all Conveyances, or other Securities, where the whole or any Part of the Consideration is for Money won at Play, or lent or advanced at such a Time, shall be

Gaming restrained by

void. — In Debt on Bond, Defendant pleaded it was for Money won at Play. Plaintiff replied, it was not for Money won at Play: It is not good, but he must add, nor any Part thereof, and therefore Judgment was for the Defendant. 8 Mod. 57. Mich. 8 Geo. 1722. *Coleborn v. Stockdale.*

*Sect. 2.* Any Person losing 10*l.* at one Time, may recover it again of the Winner by Action of Debt, and in Default thereof, a Stranger may recover it with treble Value.

*Sect. 3.* Obliges Offenders to answer upon Oath to Bill preferred against them for Discovery.

*Sect. 5.* Persons cheating at Play, or winning above 10*l.* and being convicted thereof on an Information or Indictment, to forfeit five Times the Value of their Winnings to the Informer, and suffer corporal Punishment as for Perjury.

— But where the Indictment was found by the Grand Jury, and it was quashed for Insufficiency, an Information was afterwards denied, for another Bill might be found. 8 Mod. 187. Mich. 10 Geo. 1724. *Anon.*

*Sect. 6.* Two Justices may commit common Gamesters, till they find Security for their good Behaviour.

*Sect. 8.* Any Person challenging another for Money won at Play, to forfeit his personal Estate, and suffer two Years Imprisonment.

*Sect. 9.* Saving for Persons playing in Royal Palaces.

5 Geo. 24. No Gamester to have Benefit of the Acts of Bankruptcy.

12 Geo. 2. Prohibits Lotteries and Games of the Ace of Hearts, Pharoah, Basset and Hazard. Every Adventurer in any of the said Games, Lottery or Lotteries, Sale or Sales, or who play, set at, stake or punt at either of the said Games, and be thereof convicted as aforesaid, shall forfeit 50*l.* Such Sales shall be void; and the Houses, Lands, &c. so set up and exposed to Sale, shall be forfeited to any Person who shall sue for the same.

Persons aggrieved may appeal to the next Quarter Sessions.

No Conviction or Judgment upon this Act shall be set aside for Want of Form.

Nor *Certiorari*, or other Process, shall issue to remove the Record of any such Conviction from the Quarter Sessions into the Courts of *Westminster*, but upon 100*l.* Security.

Offenders not having sufficient Goods and Chattels, whereon to levy the Penalties

ties inflicted by this Act, or who shall not immediately pay or give Security for the same, shall be committed to Gaol for six Months.

Justice of Peace neglecting, &c. shall forfeit 10*l.* one Moiety thereof to the Person who shall sue for it, and the other Moiety to the Poor.

This nor any former Act to hinder any Games within his Majesty's Royal Palaces, nor shall affect any Estate, &c. in Manors, Lands, &c. legally allotted, or held by any Allotment by Lots.

Every Action upon this Act to be commenced within three Months after the Fact committed.

Defendant may plead the General Issue, &c.

13 Geo. 2. Enacts, That the Game of Passage, and every other Game invented or to be invented with one or more Die or Dice, or any other Instrument, Engine or Device, in Nature of Dice (Backgammon and other Games now played with the Backgammon Tables excepted) shall be within the Intent of the Act of the 12 Geo. 2. against Gaming. Vide the Acts herein before at large given.

(B) *What*

(B) *What Gaming is within the several Statutes.*

1. **W**AGER concerning the right Manner of Playing is not within the Statute, because it was a meer collateral Matter which happened on a meer Chance, and the Event of it did not depend on the Success of the Game ; and the Act expressly prohibits Wagers on the Parts or Hands of the Players, and had they intended other Wagers, it is probable, that mention would be made of them. *Lutw.* 487. *Micb.*

<sup>1 Salk. 344.</sup>  
It was not  
on the  
Chance, but  
on the Right  
of the Play.

5 *W. & M. Pope v. St. Leger.*

2. If *A.* wins 100*l.* of *B.* and *A.* being indebted to *C.* 100*l.* appoints *B.* to give Bond for the 100*l.* to *C.* this is a good Bond ; for *C.* is an innocent Person, and if *A.* be bound with *B.* it will be the same Thing ; *per Holt Ch. J.* who says, it is the only Case he knows where it shall not be void, and which he says has been adjudged both on the Statute of Gaming and Usury ; and if *A.* loses 100*l.* to *C.* and *A.* and *B.* become bound to *C.* for the Money, the Bond is void as to both. *1 Salk. 344. Micb.*

<sup>5 Mod. 175.</sup>  
*S. C.*

8 *W. 3. Huffey v. Jacob.*

3. At

3. At Play *H.* may lose 100*l.* to *A.* and 100*l.* to *B.* because it is a several Contract; *secus* if it were a joint Contract. It was held in the Case of *Danvers v. Thistletworth*, that if *H.* loses 2000*l.* in ready Money, and after loses 100*l.* on Note more, the Note is good, but all beyond it is void; *per Holt Ch. J. 1 Salk. 345. Mich. 12 W. 3.* in an anonymous Case. See 12 *Mod. 258.* in Case of *Walker v. Walker, S. P.* *per Keeling Ch. J. Sid. 395.* but *Twisden e contra, Lev. 244. Trin. 20 Car. 2. B. R.*

4. Losing more than 100*l.* to several Persons at one Sitting is not within the Statute, unless they go Shares fraudulently, and join in the Stakes; for then as to the Chance of the Game they are as one Person. 1 *Salk. 345. Mich. 13 W. 3. B. R. Dickson v. Pawlet, per Holt Ch. J. 12 Mod. 540.* *per Pember-ton, losing above 100*l.* on Tick at one Sitting, though to several Persons, is void by the Statute; secus if at several Times. 2 *Show. 185. Noel v. Reynolds.**

If one lose upwards of 100*l.* to two at one Sitting, both the Sums would be void; but if one lose 99*l.* to *A.* and then on Purpose to avoid it loses 20*l.* to *B.* there *A.* may specially set out the Fraud, and so avoid it; *per cur. 12 Mod.*

Mod. 258. Mich. 10 W. 3. 1698,  
*Walker v. Walker.*

5. If 40*l.* be fairly won, and 66*l.* <sup>12 Mod.</sup> with false Dice, this will not avoid the <sup>540. per</sup> 40*l.* Debt, unless he was Party to the <sup>Holt Ch. J.</sup> Fraud. <sup>Trin. 13 W.</sup> *I Salk. 345. Per Holt Ch. J.* <sup>3. S. P.</sup> *Anon.* in Case of *Dickson v. Pawlet.*

(C) *Actions and Pleadings.*

1. IN Debt. *A.* won 80*l.* at one Meeting of *B.* and for which *B.* gave Security, and then they appointed another Meeting, and *A.* won 70*l.* more of *B.* The Question was whether this was within the Statute; the Court was divided, which the Plaintiff perceiving, discontinued his Action; but the better Opinion was, that it was not within the Statute, though if it had been pleaded, that the several Meetings were purposely appointed to illude the Statute, it might be otherwise. *2 Mod. 54. Hill. 27 Car. 2. C. B. Hill v. Pheasant.*

2. *A.* wins 100*l.* of *B.* at Play, and *A.* owing *C.* 100*l.* brings *C.* to *B.* who owned the Debt, and *B.* gave *C.* a Bond for the 100*l.* *C.* not being Privy to the Matter, accepted the Bond, and afterwards put it in Suit. The Obligor pleading the Statute, but the Plaintiff disclosing the whole Matter, the Court

were of Opinion upon Demurser, that it was not a Case within the Statute, and gave Judgment for the Plaintiff. 2 Mod. 279. *Mich. 29 Car. 2. C. B. Anon.*

3. In Debt upon Articles for 100*l.* won at a Horse Race, Defendant pleaded the Covenants, by which it was further agreed, that the Plaintiff at the Request of the Defendant would run his Horse again, at another Day and Place for 200*l.* more, and then pleads the Statute; the Plaintiff replied, that the Defendant did not make such Request. But upon Demurrer the Defendant had Judgment. For though the Statute allows the losing of 100*l.* yet in this Case the 100*l.* was not lost [before] a Security given to run for more. And tho' there was but 100*l.* actually lost, yet the Contract being [originally] made for more, it was void for the whole *ab initio*, and cannot be made good by the subsequent Event. 2 Lev. 94. *Mich. 25 Car. 2. B. R. Edgebury v. Rosindale. Vent. 253. S. C. by Name of Hedgeborrow v. Rossenders*, where the Contract is intire, though the Wagers are distinct, yet no Part of the Money is recoverable. 3 Salk. 175. cites *Rosington's Case*. The Case of *Edgebury v. Rosindale*, cited 5 Mod. 352. in the Case of *Stanhope v. Smith*, is stated to have been upon Articles

ticles of Agreement according to a Horse Match, wherein the Defendant agreed to run four Heats at several Days for 40*l.* each Heat ; and this was held by my Lord *Hale* to be but one Agreement, though to be run at several Times, and the Defendant in that Case had Judgment.

4. *Indebitatus assumpsit* lies not for Money at Play, but there ought to be a special Declaration ; it was said by two of the Judges, that peradventure by special Pleading a good Replication may be made. *Lutw.* 180. *Whitgrave v. Chancery, S. P.* because it wanted Consideration, it being but Executory. *Per Holt Ch. J.* 5 *Mod.* 14. in Case of *Walker v. Walker.* 1 *Salk.* 23. *Hard's Case. S. P.* 6 *Mod.* 129. *Pascb.* 3 *Anne, B. R. Smith v. Dicey,* notwithstanding the said Case, *Eccleston v. Lewin.* For *per Holt Ch. J.* there is no Way in the World to recover Money won at Play, but by special *assumpsit.* And the Action should be brought upon the Agreement of the Parties. 'Tis true, when two agree to play for so much Money, that is an actual Promise ; but if either win, there is no Debt arises : For nothing but a meritorious valuable Consideration can raise a Debt. *Ibid.* 129. 12 *Mod.* 81. *S. P.* But for Money staked on a Wager it lies ;

M being

being in a third Person's Hands, the winning the Wager determines the Property. 2 *Show.* 82. *contra* — v. *Sterne.* 3 *Lev.* 118. *contra*, *Eggleton v. Lewin.* 2 *Vent.* 157. *contra*, *Sherborn v. Colebatch.* A general *indebitatus* will not lie on a Wager, or Money won at Play; but it must be laid by Way of mutual Promises specially, and so a Judgment was reversed; but the chief Reason was, because the Court would not countenance Gaming, by giving so easy a Remedy; and though the Precedent of *Eccleston v. Lewin* was shewn, in which Judgment was affirmed in *Cam. scacc.* yet it could not prevail. *Carth.* 338. *Jackson v. Colegrave.* An express Promise will support an Action. *Per Parker Ch. J. Mod.* 312. *Pasch.* 1 *Geo. B. R.*

5. In an Action upon a Note for Money won at Play, Defendant pleaded the Statute, and set forth, that at one Sitting he lost 85*l.* to the Plaintiff, and 40*l.* more to *W.* But upon Demurrer, Judgment was given for the Plaintiff, for the Statute intends a Remedy where more than 100*l.* is lost to one Person, and at one Sitting; but if it be lost to several, it is not within the Act. 5 *Med.* 151. *Trin.* 8 *W. 3. B. R. Stanhope against Smith.*

6. As if *A.* loses 95*l.* to *B.* and *B.* refuses to play any longer with him, *A.* loses

loses 10*l.* to *C.* at the same Sitting, yet this shall not defeat *B.* of the Money which he lawfully won. 5 *Mod.* 352. in Case of *Stanhope* against *Smith*. This second losing being done on purpose to avoid the first Debt of the 95*l.* *B.* may set out the Fraud specially, and so avoid it. 12 *Mod.* 258. in Case of *Walker v. Walker*. But *Trin.* 28 *Car.* 2. *B. R.* where *A.* had lost to *B.* at one Sort of Game 90*l.* and to *C.* at another Sort of Game 30*l.* and to *D.* at another Sort of Game 60*l.* And in an Action of Debt on Bond brought [for one of the Sums] Defendant pleaded the Statute, and that he lost the several Sums as above at the same Time; it was demurred to, because it did not appear, that the several Winners were Parties together, or in Trust for one another, and that the Statute only voids Debts won, where they are Parties, or trusted for each other, and not to different Gamesters. But it was adjudged for the Defendant, the Statute being to be extended against Play. 3 *Keb.* 671. *Hudson v. Malin.*

## (D) Cases in Equity.

S. P. Toth. I.  
81. cites 44  
Eliz. Hub-  
bard v. Lord  
Compton.

**A** BILL was exhibited to be relieved against a Bond made for Money won at Dice; the Defendant would have been dismissed, but ordered to answer it. *Toib. 81. cites 22 May, 38 Eliz. Cromer v. Champny.*

2. A perpetual Injunction was granted to an Action at Law for 40 l. unduly won at Dice. *10 Car. 1. fo. 609. Chan. R. 88. Blackwell against Redman.*

3. The Bill being to discover what Money the Defendant won at Dice or Play of the Plaintiff; Demurrer overruled, and an Injunction to stay Suit upon a Bond entered into for [the] Money. *Toib. 84. cites 11 Car. Sucklin v. Morley.*

4. A Bill to be relieved upon Articles of Agreement, but (because the Bargain was at Dice) would not Decree it. *Toib. 86. cites Mich. 14 Car. Delabarr v. Cox.*

<sup>2 Vern. 70.</sup>  
S. C. Trin.  
1688. De-  
fendant find-  
ing the Court  
strongly  
against him,  
compounded  
with the  
Plaintiff,

5. *A.* won a great Deal of Money of *B.* which *A.* carried away with him, and won besides another great Sum, which *B.* retook by Force from *A.* *A.* brought Action at Law for taking from him forcibly this Bag of Guineas; *B.* exhibited his Bill, and Lord Chancellor granted Injunction,

Injunction, till the hearing the Cause.  
*Mich. 1687. Vern. 489. Firebrace  
against Brett.*

6. In an Action brought on an exorbitant Wager in *B. R.* in Lord Ch. J. Hale's Time, his Lordship declared he would give the Defendant leave to imparle from Time to Time, cited by Lord Jefferies, *Trin. 1688. 2 Vern. 70.* as the Case of Sir Cecil Bishop against Sir John Staples.

7. One Apprentice wins 50*l.* at Cards of another Apprentice, and gets a Bond for the Money; but Decreed to be delivered up. *Trin. 1693. 2 Vern. 291. Woodroffe against Farnham.*

For further Doctrine on Gaming, *vide* *Palm. 486, 487. 2 Inst. 713. Lutwy. 197. 1 Hale Plac. Coron. 543. 1 Keyl.*

48. By Statute 5 Geo. 2. c. 30. s. 12. No Bankrupt shall be intitled to any Allowance out of the Produce of his Estate and Effects, who hath lost in one Day the Value of 5*l.* or in the whole the Value of 100*l.* in twelve Months next before his becoming Bankrupt, at Cards, Dice, Tables, Tennis, Bowls, Billiards, Shovel-board, Cock-fighting, Horse-races, Dog-matches, Foot-races, or other Pastime or Game, or in bearing a Part in the Stakes, or by Betting, &c.

By 2 Geo. 2. c. 28. Where it shall be proved by the Oath of two Witnesses before any Justice of the Peace, or upon his own View, that any Person hath used any unlawful Game contrary to the Statute of 33 Hen. 8. c. 9. (before recited) the said Justice shall have Power to commit him to Prison without Bail, unless and until he shall enter into Recognizance with Sureties, or without, at the Discretion of the Justice, that he shall not from thenceforth play at, or use such unlawful Game. *Seet. 9.*

By 31 Eliz. c. 5. s. 7. All Suits to be pursued upon any Statute then in Force for using any unlawful Game, shall be sued and prosecuted, or heard and determined at the Leet, Sessions or Assizes of the County where the Offence shall be committed.

25 Geo. 2. c. 36. Any House, Room, Garden or other Place kept for public Dancing, Music or other Entertainment of the like Kind in London, or within twenty Miles thereof, without Licence of four Justices at Michaelmas Sessions (except under Licence from the Crown) shall be deemed a disorderly House or Place, and the Keeper, Master or Manager thereof shall forfeit 100*l.* with full Costs to him that will sue in six Months. And to encourage Prosecutions against Persons keeping

keeping Bawdy Houses, Gaming Houses or other disorderly Houses, the Constable, on Notice given him in Writing by any two Inhabitants of the Parish, paying Scot and Lot, of any Person keeping such House, shall forthwith go with them to a Justice of Peace, who, on their entering into Recognizance with Effect, shall Issue his Warrant for bringing the accused Persons before him, and shall bind them over to the next Session or Assize, and also (if he thinks fit) demand and take Surety for their good Behaviour. The Constable refusing or neglecting, to forfeit 20*l.* A Parishioner may give Evidence. Expences of Prosecution to be ascertained by two Justices, and be paid by the Overseers of the Poor; also 10*l.* to each Prosecutor. No Indictment to be removed by *Certiorari.*

M. 15 Geo. 2. *Goodburn and Marley.*  
It was determined that Horse Races are within the general Words of *other Game whatsoever,* in 9 Ann. c. 14. s. 2. Sir.

Hil. 19 Geo. 2. *Barjeau and Walmley.*  
The Plaintiff and Defendant gamed together at tossing up for five Guineas at a Time; and the Plaintiff having won all the Defendant's ready Money, lent him ten Guineas at a Time, and won it, till

till the Defendant had borrowed one hundred and twenty Guineas. In an Action for Money lent, it was insisted for the Defendant, that by 9 Ann. c. 14. the Plaintiff could maintain no Action, for by the Act all Securities for Money lent to Game shall be void, and the borrowing on an Agreement to pay is a Security. But *Lee Ch. J.* held that this was not a Case within the Act, for there is not the Word Contract, as in the Statute of Usury. And the Word Securities, as it stands in this Act, must mean lasting Liens upon the Estate.

The Parliament might think there would be no great Harm in a Parol Contract, where the Credit was not like to run very high, and therefore confined the Act to written Securities. Plaintiff had a Verdict of 126 l. *Stra. 1249.*

*Trin. 9 Geo. 2. King and Luckup.* Defendant was convicted on an Information upon this Act of 9 Ann. c. 14. s. 5. which says, that he shall forfeit five Times the Value, to be recovered by a common Informer upon Conviction. And it was moved, that a Fine should be set upon the Defendant if he refused to speak with the Prosecutor; but by the Court, all the Judgment we can give is, that he is *convicted*; and a new Action must be brought upon that Judgment

ment for the Forfeiture; which was thought sufficient to deter the Offenders. In Case of Recusancy, there is no other Judgment; and the Defendant was discharged without any Fine or Costs.  
*Stra. 1048.*

Hilary Term in the 33d Year of  
the Reign of King George the  
Second.

### Lee and Antonie.

Middlesex ff. **R** *Andolph Horne, late of Chertsey, in the County of Surry, Esq;* was summoned to answer to *John Lane* in a Plea, that he render to him the said *John Lane* 210*l.* of good and lawful Money of Great Britain, which he owes to, and unjustly detains from him, and so forth. And whereupon the said *John Lane* by *John Elderton* his Attorney says, that whereas the said *Randolph Horne* on the twenty-third Day of March in the Year of our Lord one thousand seven hundred and fifty-nine, at *Westminster* in the County of *Middlesex* aforesaid, by his certain Writing obligatory, sealed with his Seal, acknowledged himself to be held and firmly Bound to the said *John Lane*

*Lane* in the aforesaid 210*l.* to be paid to the said *John Lane*, when he the said *Randolph Horne* should be thereunto afterwards requested; yet the said *Randolph Horne*, although often requested, hath not paid the said 210*l.* or any Part thereof to the said *John Lane*; but the same to him hath hitherto refused to pay, wherefore the said *John Lane* saith he is prejudiced, and hath Damage to the Value of 20*l.* and therefore he brings his Suit, and so forth; and the said *John Lane* brings here into Court the Writing Obligatory aforesaid, which testifies the Debt aforesaid, in Form aforesaid, the Date whereof is the Day and Year in that Behalf abovementioned, and so forth.

## P L E A.

And the said *Randolph* by *Richard Brown* his Attorney comes and defends the Wrong and Injury when, &c. and saith, that he cannot deny but that the said Writing is the Deed of him the said *Randolph*; but the said *Randolph* further saith, that he ought not to be charged with the said Debt by Virtue of the said Writing, because he saith, that after the first Day of *August* in the Year of our Lord one thousand seven hundred and

and fifty-eight, a certain Horse Race was to be run on a Place called *Port Holme*, near *Huntingdon* in the County of *Huntingdon*, for a Prize of the Value of 90*l.* and a Chesnut Horse of the Duke of *Devonshire's* called *Atlas*, and a Chesnut Horse of Mr. *Warren's* called *Careless*, were then and there to run for the said Prize in the said Race. And the said *Randolph* further saith, that before the said Race was run (to wit) on the said third Day of *August* in the said Year of our Lord one thousand seven hundred and fifty-eight, at *Westminster* aforesaid, the said *John Lane*, at the special Instance and Request of the said *Randolph*, undertook, and to the said *Randolph* then and there faithfully promised, that he the said *John Lane* would pay to the said *Randolph* the Sum of 45*l.* of lawful Money of *Great Britain*, if the said Horse of the said Mr. *Warren* should outrun and beat the said Horse of the said Duke of *Devonshire* in the said Race, and in Consideration thereof the said *Randolph* afterwards (to wit) on the same Day and Year last aforesaid, at *Westminster* aforesaid, undertook, and to the said *John Lane*, then and there faithfully promised, that he the said *Randolph* would pay to the said *John Lane* the Sum of 40*l.* of like lawful Money, in Case the said Horse of the

the said Duke of *Devonshire* should outrun and beat the said Horse of the said Mr. *Warren* in the said Race. And the said *Randolph* doth aver, that the said Race was afterwards on the same Day and Year last mentioned run on the Place aforesaid; and that the said Horse of the said Duke of *Devonshire* did outrun and beat the said Horse of the said Mr. *Warren* in the said Race (that is to say) at *Westminster* aforesaid; and the said *Randolph* further saith, that he the said *Randolph* afterwards (that is to say) on the said twenty-third Day of *March* in the said Year of our Lord one thousand seven hundred and fifty-nine, at *Westminster* aforesaid, by the said Writing Obligatory in the said Declaration mentioned, acknowledged himself to be held and firmly bound to the said *John Lane* in the aforesaid 210*l.* to be paid to the said *John Lane*, whenever afterwards he the said *Randolph* should be thereunto requested; and that Part of the Consideration of the said Writing Obligatory (to wit) the Sum of 40*l.* Part thereof was for the said Sum of 40*l.* won by the said *John Lane* of the said *Randolph*, by Betting with the said *Randolph* on the Side of the said Horse of the said Duke of *Devonshire* against the said Horse of the said Mr. *Warren* in the

said Race ; whereby, and by Force of the Statute, made in the 9th Year of the Reign of our Lady *Anne*, late Queen of *Great Britain*, for the better Preventing of excessive and deceitful Gaming, the said Writing wholly became and is void, and of no Effect in the Law ; and this he is ready to verify ; wherefore he prays Judgment, if the said *John* ought to have or maintain his said Action against him, &c.

*W. A.*

*Mr. A——'s Opinion.*

As the Fact is admitted that Part of the Consideration Money of this Bond was 40*l.* won upon a Bett at a Horse Race, the Plaintiff has no Chance either by demurring or replying to this Plea. For the Plea is well enough in Point of Form, though it accounts only for 40*l.* Part of the Consideration ; for the Statute *9 Ann.* expressly says, That all Bonds, &c. where the whole or any Part of the Consideration is for Money won at Play, shall be void ; and Betting upon a Horse Race hath been held to be within this Statute. Therefore I think the Plaintiff's best Way is to discontinue this Action, and bring another for the Money really lent, which I think he may do

N not.

*Cases in Equity.*

notwithstanding this Act, if the Money was *bona fide* lent, and not to enable Defendant to pay any Gaming Debt. For though the Statute makes *the Bond* void where Part of the Money was for a Gaming Debt; I think it cannot be construed to extend so far as to deprive him of the Means of Recovering the rest (which was honestly due) in an Action of *Affumpſit* for the Money lent.

*Lincoln's Inn,*  
Feb. 15, 1760.

*W. H. A.*

Where a Man holds Stakes at a Horse Race, and the Parties cannot agree who won the Match, yet both are suing at Law for the Money, and in many other like Cases, the Party may bring his Bill of Interpleader in Equity for Claimants to interplead amongst themselves, to whom the Money belongs, and to prevent his paying it twice over, and that Proceedings against him at Law may be staid 'till the Title or Claim of Right be determined. And this he may do, whether any Suits be actually commenced against him in Law or Equity, or is only in Danger of being sued or molested by the Parties. But to this Bill he must annex an Affidavit that he does not exhibit it by Fraud or Collusion with all or either

either of the Defendants, or of any other Person, but only to be indemnified, and to pay his Debt safely to such Person to whom this Court shall order or adjudge the same to belong.

*Statute of 16 Car. 2. c. 7.**Hill against Pleasant.*

Debt upon the Statute 16 Car. 2. made against Gaming. The Case was, it happened that the Defendant won 80*l.* at one Meeting, for which the Plaintiff gave Security, and another Meeting was appointed, and Defendant won 40*l.* more, in all above 100*l.* Question if within the Statute; and the better Opinion was, that it was not; though if it had been pleaded that the several Meetings were purposely appointed to evade the Statute, it might be otherwise. 2 Mod. 54.

*Danvers against Thistlewaite.*

Debt upon the Statute of 16 Car. 2. against Gaming. Upon special Verdict found that there was a Ring of 100*l.* Value lost at Gaming, which was staked down; and also lost at the same Time 100*l.* upon Credit, for which the Bond

N 2 was

was given, and held not to be within the Statute; for if 1000*l.* be lost at Gaming in ready Money, and a Bond given for 100*l.* lost at the same Time, not within the Statute. *Sid.* 394.

Gaming not within the Statute, where the Security is given to a third Person. *2 Mod.* 279.

Covenant to run a Horse for 100*l.* at one Time, and for 100*l.* at another Time, within the Statute; the Contract being made at one Time, though to run at several Days. *2 Levinz* 94.

A general *Indebitatus Assumpfit* does not lie for Money won at Gaming, but ought to be special. *1 Lutw.* 180. *Vide 2 Lev.* 118. *2 Vent.* 175. *5 Mod.* 13. *Mod. Caf.* 128.

A Person was convicted of keeping a Cockpit, and the Court resolved it to be an unlawful Game within the Statute of 33 Hen. 8. and fined him 40*s.* a Day. *Kel.* 510.

A Person lost his Watch, which was delivered; and after that the same Party lost 100*l.* upon Tick, for which a Bond was given, and this was held good: For the Statute doth not restrain from Playing for ready Money, as the Watch is intended to be, but such Playing only as puts People in Debt. But it was here insisted, that if above 100*l.* were lost

at

at Play, and part paid presently, and Bond given for the Residue, such Bond would be void by the Statute. *1 Lev. 244. 1 Lil. Abr. 645.*

It has been adjudged, that if *A. B.* lose 100*l.* to one, and afterwards 100*l.* to another upon Tick or Credit, it is not within the Meaning of the Statute; because it is a several Contract. But it would be otherwise upon a joint Contract; and if a Person lost 200*l.* in ready Money, and 100*l.* more, for which he gave his Note, the Note would be good, but all beyond it void.

A Person brought an Action for 40*l.* the Defendant pleaded it was for Money won at Play, and that at the same Time he also lost 66*l.* to another; but on Demurrer the Plaintiff had Judgment; for it was held, that losing 106*l.* to several Persons at one Time is not within the Statute of 16 Car. 2. unless they are Partners in the Stakes: For then as to the Chance of the Game they as one Person. *Mich. 13 W. 3. 1 Salk. 345.*

Where Security is given for Money won at Gaming to a third Person not being Privy to it, or not knowing it was won at Play, it is not within the Statute. As where the Winner being indebted to another, brought the Loser to his Creditor,

ditor, who entered into a Bond to him,  
*&c.* 2 Mod. 297.

If a Person lose Money at Play, and the Loser gives the Winner a Bill for it, drawn upon a third Person who accepts the Bill; though the Acceptance of the Bill is in the Nature of a new Contract, yet all is founded on the illegal Winning. And it is for the Security of the Payment of the Money lost, and therefore it is within the Statute. But if the Bill be assigned for a valuable Consideration to a Stranger, such Assignee not being Privy to the first wrong, as was the Winner, it shall not be within the Statute. 1 Salk. 344.

### Heath against Connor.

This very late Case renders it necessary to lay down this general Rule in all *Qui Tam* Actions, as well on Gaming as otherwise, That the Attorney and nominal Prosecutor are justified in receiving and keeping the Penalties recovered; nor hath the real Prosecutor any Remedy over against either of them. Hence it behoves every real Prosecutor (who is generally the injured Party) to make a Friend that may be depended upon, the nominal Plaintiff in such *Qui Tam* Suit, in

in order to secure himself the safe Receipt, as well as Recovery of the Penalties, as a Recompence and Indemnity for his Loss and Expences.

*Case on the Act of 9 Ann. c. 14.*

SIX or seven years ago *A. B.* won and received a considerable Sum of Money of *C. D.* There never was any Difference concering it between them, but on the contrary *C. D.* if in his Power would clear and discharge *A. B.* But a common Informer now threatens to prosecute *A. B.* on the Stat. 9 Ann.

*Ques.* I. Will *A. B.* be subject to a Prosecution on the second Clause for winning and receiving above 10*l.* at one Sitting, and a Forfeiture of the Money won, and three Times the Value, and to a Prosecution on the fifth Clause also for winning above 10*l.* and a Forfeiture of five Times the Value for one and the same Fact? Or will a Recovery on one Clause be a Bar to a Prosecution on the other?

*Ans.* I am of Opinion, that *A. B.* is liable to be prosecuted upon the second Clause; but although that Clause relates to Money won at Play, even without Fraud or Deceit, and the fifth Clause relates principally to Money won deceitfully;

fully ; and though there is no Provision made to hinder a Prosecution on both these Clauses, yet I think a Court of Justice will not put such a Construction upon the Statute, as to make a Man liable to a double Penalty for the same Offence, but a Recovery on one of the Clauses may be pleaded in Bar of the other.

*Quest. 2.* The Time for the Loser to recover being past, and the Forfeiture given to the common Informer, can his Majesty pardon the Offence ? And will such Pardon take off, or can it be pleaded in Bar to a Prosecution for the Penalties and Forfeitures under both the above Clauses, or either of them ; or to a Bill brought under the above Clauses or either of them ; or to a Bill brought under the above Clause for a Discovery ; and will it be adviseable for *A. B.* to procure such Pardon before or after a Prosecution commenced, and of the particular Offence, or in general Words ?

*Ans.* No Part of the Penalty is given to the Crown, and therefore it is doubtful whether a Pardon can discharge this Offence ; but it certainly cannot be a Bar to any Prosecution, unless it be obtained before an Action or Prosecution be commenced ; but a Pardon before a Prosecution commenced, I incline to think, will bar a Prosecution for the Penalties.

Though

Though the Clause is not clearly penned, yet if *A. B.* and *C. D.* be upon good Terms, it seems not an impossible Matter to prevent Recovery of the Penalties, for the Loser to file a Bill for a Discovery, and the Winner to pay back the Money won to the Loser, and actually to pay the same. I cannot say it is clear that this will prevent recovering the Penalties, because the three Months are long since elapsed; but it seems not an impossible Method to prevent the Loss of the Penalties, though I cannot advise it as a certain Method.

March 18, 1736.      *N. Fazakerly.*

*Case on the Stat. 9 Ann. c. 14. s. 2.*

E NACT S, That after the first Day of May one thousand seven hundred and eleven, any Person who shall at one Time by Playing at Cards, or other Game, lose to one or more Persons the Sum or Value of 10*l.* and shall pay it to the Winner, the Loser shall be at Liberty within three Months next after, to sue for and recover the same from the Winner or Winners with Costs, by Action of Debt founded on this Act; in which Action it shall be sufficient for the

the Plaintiff to alledge, that the Defendant is indebted to him, or received to his Use the Money so lost and paid ; or that the Defendant converted the Goods won of the Plaintiff to the Defendant's Use ; whereby the Plaintiff's Action accrued to him according to the Form of the Statute ; without setting forth the special Matter. And in Case the Loser shall not within the Time aforesaid really and without Covin or Collusion sue, and with Effect prosecute for the Money so lost, any other Person by the like Action may sue for and recover the same, and treble the Value thereof with Costs of Suit, against the Winner ; a Moiety to himself, and the other Moiety to the Poor of the Parish where the Offence shall be committed.

*Set. 3.* All Persons liable to be sued, by Virtue of this Act, shall be compelled to answere on Oath any Bill preferred against him for Discovery of the Money or other Thing won at Play.

*Set. 4. Proviso,* that upon the Discovery and Repayment of the Money or other Thing won at Play as aforesaid, the Person who shall discover and repay, shall be discharged from any further Forfeiture or Penalty.

*Set. 5.* If any Person, by Fraud or ill Practice at Play, shall get or win any Sum

Sum of Money or other Thing, or shall at one Sitting win above 10*l.* and shall be convicted thereof on an Indictment or Information, shall forfeit five Times the Value or Sum won ; and in Case of ill Practice shall suffer such corporal Punishment as in Perjury ; the Penalty to be recovered by such Person who shall sue for the same as aforesaid.

*The C A S E.*

Several Years ago *A. B.* won a large Sum of Money of *C. D.* Part whereof was paid, and a Bond given for the Residue, which is still unpaid. But *A. B.* at Times before had lost to *C. D.* several Sums of Money ; and *C. D.* appears very well satisfied, and willing to pay his Bond, but a common Informer threatens to prosecute *A. B.* on the above Act for the Money won of *C. D.*

*Quest.* I. If *A. B.* should cancel and deliver up the Bond, will he be subject to any Penalty or Forfeiture for that Part of the Money won, as he never received the same, nor any Benefit thereby ?

*Ans.* I am of Opinion, that unless the Money is paid to *A. B.* he will not be liable to any Penalty or Forfeiture, for that Part of the Words of the Act requiring

requiring that there should be a Payment to the Winner.

*Ques<sup>t</sup>. 2.* If *A. B.* should now make *C. D.* Satisfaction for the Money won and paid, will that be a sufficient Bar to a common Informer's Prosecution? And for that Purpose what Sort of a Discharge will be proper for *A. B.* to take? Or if *C. D.* should acknowledge and give in Evidence that he hath received Satisfaction, will that be sufficient?

*An<sup>s</sup>.* The Time for *C. D.* to sue for the Money being now elapsed, no Satisfaction made to him can be any Bar to a Prosecution by a common Informer, *C. D.*'s Right of Action being intirely gone, and therefore I think no Discharge now to be taken from *C. D.* nor any Evidence from him of Satisfaction received after the three Months, will be of any avail to *A. B.* in this Case against the ccommon Informer's Suit.

*Ques<sup>t</sup>. 3.* As it is above three Months since the Money was lost, can *C. D.* the Loser, now prosecute in his own Name? And can a Judgment recovered by him above three Months after the Money lost, be pleaded in Bar to a Prosecution by a common Informer?

*An<sup>s</sup>.* I am of Opinion, that *C. D.*'s Right to sue in his own Name is at an end; and if he was now to recover it,

it would not be pleadable to a common Informer's Prosecution, and besides would be looked upon as a Collusion.

*Ques<sup>t</sup>. 4.* Now the three Months are past, is *A. B.* obliged to answer and make discovery of the Money won to a Bill in Equity brought by the Loser? And is any Person but the Loser intitled to have such Discovery? And can *A. B.* now have the Benefit of the Clause of Indemnity in the Act on Discovery and Repayment of the Money lost, as there does not seem to be any Limitation of Time to that Clause? And in Case a Bill should be brought by a common Informer, and Discovery thereupon made, and Submission to repay, must Repayment be made to *C. D.* the Loser, or to the Person that brings the Bill? And will a Release, or what other Discharge be most proper for *B.* in that Case to take, to defend himself against any other future Prosecution? And will it be necessary for *A. B.* in Case a future Prosecution should happen, to prove the actual Repayment of the Money? Or will proof of a Discharge or Acknowledgment from *C. D.* the Loser, that he has been satisfied, be sufficient?

*Ans.* The Act has not said who shall be at Liberty to bring this Bill, and therefore, I think, either the Loser or

O common

*Cases in Equity.*

common Informer who has filed his Information, so as to enable him to have the Penalty, may file the Bill in either of their Names ; but, I think, it is not too late to have the Benefit of a Discovery, and an Offer to repay the Money. It seems doubtful to me whether the Money is to be paid to the Loser or common Informer. *Repay* imports Payment to the Loser from whom it came, and yet that seems not to be the Intent of the Act, but this the Court will determine, there must not only be a Discharge taken, but actual Proof of Repayment to defend *A. B.* against any future Prosecution, and it must appear to be without Suspicion of Fraud or Collusion.

*Quest.* 5. It is above six Years since the Money was won ; do the Penalties of this Act come within the Statute of Limitations ? Or will the Length of Time be of any Service to *A. B.* in his Defence ?

*Ansf.* The restraining Statute of the 31st of *Eliz.* doth not extend to this case ; and therefore, I think, no Statute of Limitations can be pleaded ; but on the Trial the Length of Time will be of Service to *A. B.* in his Defence.

*Quest.* 6. Is it not necessary, on a Prosecution by common Informer on *Set<sup>t</sup>. 2.* for Recovery of the Money lost, and  
three

three Times the Value, for the Plaintiff to declare for the exact Sum lost, and exact Time when, to entitle him to recover? And if this is not necessary, can a Judgment recovered be pleaded in Bar to a subsequent Action, since if the Sum or Time not certain, they may appear to be different Actions for different Sums lost; and Defendant to be subject to different Prosecutions for one and the same Fact?

*Ans.* The Sum that is laid must be proved, but it is not necessary they should lay all that was lost; for Instance, if 100*l.* and odd Pounds are lost, they may lay that *C. D.* lost 100*l.* as to the Time it is not necessary to be so exact; and the Defendant may by an Averment in a second Action, avail himself of its being of the same Winning he was condemned for before.

*Quest.* 7. In an Action on *Sect.* 2. by a common Informer, can the Loser be admitted an Evidence to prove the Money lost and paid, and he be compelled to give Evidence by him that sues?

*Ans.* The Loser may be a Witness, the three Months being expired, and he is compelled to appear, if served with the Process of the Court when the Cause is to be tried; and if he does not appear, an Attachment will be awarded

against him, on Proof of regular Summons a reasonable Time before the Trial.

*Quest. 8.* This Money was won in a public Company where several played, and others won besides *A. B.* and lost besides *C. D.* Will it be sufficient to prove, that *A. B.* won, and *C. D.* lost so much Money, or as others at the same Time played, and won, and lost, will it not be absolutely necessary to prove, that *A. B.* won and received *C. D.*'s Money directly from *C. D.* since it might be another Person's Money that *A. D.* won, as several won and lost? Or *C. D.* might lose to another Person, and *A. B.* might win and receive *C. D.*'s Money from such Person?

*Ans.* It must be proved, that *A. B.* won *C. D.*'s Money, and if it was won by several Persons they are all liable. But *A. B.*'s Winning of *E.* the Money which *C. D.* lost to *E.* will not warrant charging *A. B.* with the Winning of *C. D.*'s Money.

*Quest. 9.* In case a common Informer, with or without the Consent of *C. D.* brings an Action against *A. B.* on Sect. 2. of this Act, for Money lost and paid by *C. D.* and three Times the Value, May not *A. B.* give the Preference to a Friend, and confess and suffer Judgment to

to pass against him by Default, and plead such Judgment in Bar? And will it be adviseable for A. B. before or after any Prosecution began, to have a Writ actually sued out against him by such Friend; and Proceedings regularly carried on to a Judgment by Default? Or will a Judgment confessed with any such Proceeding be sufficient?

*Ans.* This is a Method often taken; but, I think, it appears collusive. A. B. will not be able to screen himself against an Adversary's Suit, in which the Recovery by him pleaded may be averred to be fraudulent; but if it be first commenced, and no Fraud can be shewn, it will be a Defence to any subsequent Suit.

*Quest.* 10. Will it be necessary for A. B. actually to pay the Penalty to such Friend, without Fraud or Collusion; and to put himself absolutely in his Power whether ever to have it returned or not, and plead such Judgment and Payment in Bar? Or will the Judgment remaining of Record in full Force without any Promise or Agreement to Defeazance, or make it void, be a sufficient Bar?

*Ans.* I have before said, that any Circumstance of Collusion will defeat the Proceedings, and the Plaintiff not ma-

king Use of his Judgment so as to compel the Payment of the Money, will be an Evidence of Fraud, and they both be obliged to discover the Transaction, so as to enable the common Informer to reply *per Fraudem.*

*Quest.* 11. As the Forfeiture is one Moiety to the Poor, and the other Moiety to him that will sue, Can the Churchwardens compound and release for the Poor before or after Judgment? And will such a Release be a sufficient Discharge as to the Poor's Moiety against him who sues?

*Ans.* He who sues has no Right to interpose as to the Poor's Moiety; but, I think, that the Release of the Churchwardens, without actual Payment, will not be an effectual Discharge to *A. B.*

*Quest.* 12. After Judgment recovered, can the Churchwardens or Overseers take out the Execution? Or compel him who sues to take out Execution for the Poor's Moiety, and by what Means?

*Ans.* The Court in which the Judgment is recovered, will probably give the Overseers and Churchwardens leave to take out the Execution; but if not, a Court of Equity will oblige the Plaintiff, who is but a Trustee for a Moiety, to do it.

*Quest.*

*Ques<sup>t</sup>. 13.* Can he who sues after the Judgment is recovered release the Judgment, or acknowledge Satisfaction for the whole? And will the Attorney be safe in entering Satisfaction by Virtue of a Warrant of Attorney executed by him who sues for that Purpose? Or will the Defendant, or he who sues only, be afterwards answerable for the Poor's Moiety if not paid before?

*Ans<sup>t</sup>.* None of these Contrivances will serve to defeat the Poor of their Share; and I would advise no Attorney to be concerned in acknowledging Satisfaction on such a Foot.

*Ques<sup>t</sup>. 14.* If Judgment should be recovered against A. B. on Sect. 2. for the Money lost and paid, and three Times the Value, will he still be subject to an Information, Indictment, and Forfeiture of five Times the Value on Sect. 5. of this Act, for winning more than 10*l.*, at one Sitting, and so *vice versa*, if prosecuted on Sect. 5. first, to a Prosecution afterwards on Sect. 2. the one to recover the Money lost and paid, the other as a still further Punishment on Gaming as a Crime, and the Offender subject to a Forfeiture of nine Times the Value in the whole, which is so severe a Penalty, one can hardly think it intended by the Act; or that the Defendant should

*Cases in Equity.*

should be subject to two Prosecutions for one and the same Crime. May not therefore a Judgment recovered on one Clause be pleaded in Bar to a Prosecution on the other; or shewn to the Court, as a Reason why an Information should not go?

*Ans.* I am of Opinion, that they are to be taken as distinct Punishments; and the Action on *Sect. 5.* cannot be brought till after the Party is convicted on an Indictment or Information; nor can a Recovery on one Clause be pleaded to a Prosecution on the other; but a Recovery and Repayment according to the fourth Clause, will be an Exemption from both.

*Quest. 15.* Can the Loser be an Evidence to prove the Money lost, on an Information or Indictment on the fifth Clause; and on an Action for the Penalty, will the Record alone be a sufficient Evidence?

*Ans.* The Loser may be a Witness on an Information or Indictment on the fifth Clause; and, I think, the Record of the Conviction will be a sufficient Evidence for the Plaintiff to rest on; but the Defendant notwithstanding may be let into any material Difference.

*Quest. 16.* Has the Power of the Parish any Thing to do with the Forfeiture  
on

on the fifth Clause? And must he who sues for the Penalty after Conviction, sue as well for himself as the Poor, &c. or himself only?

*Ans.* I think the Words, such Action as aforesaid in Sect. 5. mean an Action as well for the Informer as the Poor, and ought to be so brought.

*Quest.* 17. Winning more than 10*l.* being a Crime under the fifth Clause, whereof the Offender must be convicted by Information or Indictment, can his Majesty pardon it? And if *A. B.* should procure such Pardon before or after a Conviction, will it take off, or can it be pleaded to any Prosecution, for any of the Penalties or Forfeitures made under this Act? And if a Pardon be effectual, will it be advisable for *A. B.* first to procure himself to be indicted, or an Information to be exhibited against him, and then procure a Pardon for the particular Offence? Or will a general Pardon of all Offences of this Kind be sufficient? Or is there any other Way than these here particularly questioned for *A. B.* (who when he first came of Age played without any Fraud or ill Intent, and without knowing or thinking it a Crime, and upon the whole lost far more than he won) to avoid the Se-

verities of this Act? please to well consider and advise.

*Ans.* As these Penalties are only given to common Informers, and not to the Party grieved, I think the King's Pardon will effectually secure *A. B.* and it may be taken before any Indictment or Information is lodged in general Words. But *A. B.* must not stay till an Action is brought against him, because then there will be particular Interest vested in the Plaintiff in such Action.

March 11, 1736.

John Strange.

F I N I S.

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